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ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

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HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

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ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

FRIDAY, OCTOBER 23, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2228, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Present: Senators Dole, Specter, Biden, and Leahy.

Staff present: Mike Klipper, chief counsel, Charles Borden, Maura Whelan, Peggy Williams, Linda Colancecco, professional staff members, Criminal Law Subcommittee; Duke Short, Paul Summitt, counsels to Senator Thurmond; Kathy Zebrowski, Scott Green, Mark Gitenstein, Mike Gelacek, counsels to Senator Biden; Bruce Cohen, Paul Michel, counsels to Senator Specter; Ben Scotch, counsel to Senator Leahy; Richard Velde, Doug Comer, counsels to Senator Dole; Arthur Briskman, counsel to Senator Heflin; John Nash, Linden Kettleworth, counsels to Senator Laxalt; Burt Wides, counsel to Senator Kennedy; Mike Epstein, counsel to Senator Robert Byrd; and Ken Kay, counsel to Senator Baucus.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. The committee will come to order.

We meet today to discuss a subject of very urgent concern, which is the wave of violent crime terrifying the people who live in the inner cities. Violent crime has risen by 59 percent in the last 10 years.

From 1979 to 1980, robberies increased 20 percent, rapes by 9 percent, aggravated assaults by 8 percent, murders by 7 percent. Serious crime thus has been increasing at a rate much faster than population growth, so you can't account for this just by the fact that there are more people.

The Constitution in its preamble states that one of the principal tasks of government is to "insure domestic tranquility." But as we look at this rate of violent crime, I think we have to assume that this is one area in which if we have not failed, we certainly are far from success.

Now, last April the Attorney General appointed a Task Force on Violent Crime under the leadership of former Attorney General Griffin Bell and Governor of Illinois James R. Thompson to develop recommendations on ways in which the Federal Government can improve efforts to combat violent crime.

Between April and July the task force held 12 days of hearings in seven cities, received testimony from 80 witnesses, and its work ranged over the entire field. It included criminal law, criminal court procedure, juvenile crime programs and the treatment of victims of crime. In a sense, as one commentator said, the task force put the criminal justice system on trial itself.

I think that a glance at some of the very grim facts that are highlighted at different points in the report indicate the gravity of the situation. The findings and recommendations of the panel were issued in two phases, the first dealing with measures that the Department of Justice can undertake, and the second containing measures that would require changes in the law in the allocation of resources.

I believe, Mr. Attorney General, there are 64 recommendations in the final report. The Washington Post commented this summer shortly after the release of the report that the test of the task force work and whatever Government actions it inspires will not be really how many of those 64 recommendations are put into effect but which ones go into effect.

The key task before Congress and the administration is to determine which of those proposals warrant implementation in the time remaining to us in this 97th Congress. So with this goal in mind, we are meeting today to obtain some guidance from the administration as to which of the task force recommendations it feels should have priority and what order of priority it attaches to the list.

We are aware that 4 months have passed since the phase I recommendations have been made public, and 2 months since the final task force report has been made public, so that there has been an opportunity for the public to make some judgments and make some assessments. We are anxious to hear what action the administration has taken and is contemplating on the full set of recommendations.

Now just one further word, because it is a very sensitive part of this whole question, and that is the matter of funding, a matter that is very high on the agenda of the Congress these days. Now, as far as I can see, a specific spending level is recommended in only one instance among the 64 items, although a number of them obviously involve additional resources that will be required by the Department of Justice and in order to give the kind of assistance that seems to be contemplated for States and localities in criminal justice projects.

So I think that we will want to talk very frankly, very realistically and in some reasonable detail about how we are going to put flesh on these proposals, how we are actually going to pay for them, how they are going to come into being.

So in order to understand better the administration's position on the practical questions of timing and priority and cost, who is going to pay, we are very fortunate today to have the Attorney General of the United States and some of his associates at the Department of Justice.

I believe, Mr. Attorney General, you will have some members of your staff we will ask you to introduce as you call upon them.

Senator Thurmond, the chairman of the full committee, has asked that we include his statement in the record of the hearing at this point.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF SENATOR STROM THURMOND

Mr Chairman, it is my understanding that the hearing this morning is for the purpose of obtaining an overview of the work of the Attorney General's Task Force on Violent Crime and the evolving response of the Administration to the recommendation of the Task Force.

I commend the task force for its work and the Attorney General for his sound judgment in making an attack on violent crime a top priority of this administration.

Earlier this year, I joined a number of Senators in sponsoring a resolution to express the sense of the Senate that taking all appropriate action necessary to combat violent crime should be a national priority of the Senate, and should receive immediate attention. That resolution passed the Senate without dissent. I have introduced some 14 bills—including the Criminal Code Reform Act of 1981—and cosponsored a half dozen others that are directed at dealing with serious crime.

It is no wonder that there is a dramatic increase in public concern about crime. Over 42 million crimes were committed in 1980. Violent crimes—murder, forcible rape, robbery, and aggravated assault—increased more than 13 percent in 1980 alone. FBI statistics show that in 1980 a murder was committed every 24 minutes, a forcible rape every 6 minutes, a robbery every 56 seconds, and an aggravated assault every 48 seconds.

While the Federal Government has a limited role to play in dealing with violent street crime, there are many things we can do to help. I appreciate the Attorney General's efforts to develop an administration program to combat violent crime and I thank him for coming today to share his conclusions with us.

Senator **MATHIAS**. Senator Biden?

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator **BIDEN**. Thank you, Mr. Chairman.

Welcome, General. It is good to have you here in this long-awaited and much-needed discussion concerning violent crime in America. I would like to begin my remarks this morning by congratulating not only you but the cochairmen of the Task Force on Violent Crime, Judge Bell and Governor Thompson, and also congratulate Jeffrey Harris, an old classmate of mine, who was the Executive Director of the task force.

I congratulate you for the seriousness of purpose and the thoroughness with which the task force moved forward in analyzing the needs of law enforcement in this country. It dealt with the most pernicious domestic issue facing us—and that includes the economy.

I have a very strong conviction that international drug trafficking, organized crime and violent crime are as real a threat to our national security as threats we face from abroad from hostile powers, and that combating these crimes must be as real a national priority as strengthening our national forces. I mean that sincerely.

We have in this era of budget cutting, acknowledged, and I think properly so, that we have to do a great deal more in terms of not only rhetoric but actual expenditure to deal with what many of us believe are our somewhat faltering defense networks in various areas of the Defense Establishment. I am somewhat concerned, I should tell you at the outset, that many of my colleagues on the Hill, and apparently many of the budgeteers in the administration, fail to put the same priority on dealing with the question of violent crime in America.

Together with my colleagues on this committee, I have looked forward to the administration's positions and proposals in response to the release of the task force final report last August. Since the package of proposals you brought with you today was not available to members of the subcommittee prior to this hearing, I am necessarily going to limit my remarks at this time to a few initial observations.

First, in my opinion the administration has made a very wise decision in basing its crime package proposal in large part upon legislation that is already before the Congress. As I read your proposals, much of what you have proposed has already passed either one or both Houses or has already been introduced in the Congress.

In this and in previous Congresses, committees in both the Senate and the House have invested a great deal of time and effort developing those proposals, and some, such as the amendments to the Posse Comitatus Act, have already passed both Houses and conference. Many of the proposals are contained entirely or in part in two bills, the Criminal Code Reform and the National Security and Violent Crime Task Force Act of 1981. As a cosponsor, along with the chairman of the full committee, of the Criminal Code Revision, I am going to at some point through the questioning use that as at least a partial basis for comparison and questioning.

Both the bills I referred to are the product of no little research and legislative hearings and debate, and as you know, the Criminal Code, which Chairman Thurmond as well as many other members of the Judiciary Committee introduced in this Congress, has been the subject of over 12 volumes of hearings over the years.

Experience with the Criminal Code reform legislation in previous Congresses has taught us two important lessons. Obviously you have learned them both, and I hope we have learned them. The first is that we must be open to debate and willing to compromise. The second is that controversy over proposed changes in substantive and procedural criminal law will prevent the passage of the entire Criminal Code.

Each year, as Senator Mathias knows, we have gotten an awful long way down the road toward a major revision of the Criminal Code to find that about 2 percent of the code which encompassed disagreement prevented the entire code from being passed. The thing that I am most pleased about in your proposals and your approach thus far is that when we work toward that Criminal Code, as the chairman of the subcommittee pointed out this morning, we will be working in the interim on passing specific pieces of legislative initiative that deal with the areas you are most concerned with and, hopefully, that we are most concerned with.

I am going to, I should tell you at the outset, be asking you questions specifically as they relate to drugs and a proposal that myself and a few of my colleagues have made regarding the establishment of a Cabinet level director of narcotics and organized crime, a Cabinet level position that would allow coordination of all the various elements of the Government.

Your task force, the last Congress and the Congress before that have been consistent in their criticism of the lack of coordination among the resources that are available at this juncture at the Federal level, and I know you have some positive proposals in that regard and I look forward to hearing more detail about them.

In an article printed in the Washington Post on October 10, the former Administrator of DEA was quoted as saying, and I quote:

> President Reagan has called for strong and consistent measures to combat crime. The trouble is that the Office of Management and Budget is sending out his law enforcement deputies with blank cartridges. Congress most likely will increase the resources allocated. This would be one set of budget restorations the President himself should be glad to approve.

As I told you before the hearing, I don't expect you to embrace that but I for one am going to try very hard to give you more money, and I expect we will go through the ritualistic exercise of you saying you don't need it or you don't want it and you can't have it, but I hope you will be glad if we get it to you.

I also would like to point out that—and I will conclude with this, Mr. Chairman—that I believe that most of the public is somewhat skeptical about governmental efforts, whether they are initiated by Democrats or Republicans, Congresses or State legislatures with regard to waging new wars on crime.

Everyone in the public is very interested, they are very concerned, they are, very simply, frightened; but they are somewhat skeptical about our waging wars on crime. I really hope that whatever we jointly come up with in this Congress and with this administration, we do not oversell what we are doing. I really and truly believe the most useful thing we can do is, quite frankly, understate rather than overstate what we are likely to accomplish, for failure to do that I think is really going to reinforce that lack of confidence that is out there and make it more difficult for us to come forward with reasonable proposals.

To that end, I believe that we will make a serious mistake if we announce to the public, either through the Congress or the administration or jointly, that we have made a major new effort that is going to fundamentally impact upon violent crime in America.

As our colleague Judge Heflin constantly points out in this committee, 94 or 96, I forget the percentage, but 94 percent of all the violent crime in America is beyond the jurisdiction of the Federal Government. It happens in shopping malls and neighborhoods and streets, where Federal agents and Federal law enforcement officials have no authority nor should they have authority. So the vast majority of the crime committed in America is beyond the direct jurisdiction of the Federal Government.

The vast majority of crime—the estimates range from 50 to 60 percent of all the violent crime in America—is drug related. The one area where the Federal Government is uniquely equipped to deal with violent crime is in the drug area.

I believe we can do more to help the States by impacting upon international drug trafficking than anything else we can do, and a part and parcel of that is the need to deal with organized crime.

I will conclude, Mr. Chairman, by pointing out that years ago I observed on the television the hearings conducted by Senators McClellan and Kefauver and others in which they made the first major thrust against organized crime in America, and I recall large charts that they had behind them, that were 6 and 8 feet high, and they listed on those charts the names of 24 or 25 organized crime families that were identified for the Congress.

You and I both know, unfortunately, every one of those organized crime families is alive and well and doing business in America today. They are all there. We have not broken up a single, solitary organized crime unit in America. We have grabbed individuals who head those units, we have taken pieces of them, but we have yet to fundamentally impact on a single one of those so-called families.

I should note for the public that we are no longer just talking about the classic Cosa Nostra, we are talking about Hispanic organized crime organizations, Black organized crime, Greek organized crime, and plain, ordinary WASP organized crime outfits in this country. It is not merely in the mode of the movie "The Godfather."

So I would hope that another area we will be able to talk about as we develop this is what can we do since we are the only organ of government that can do anything of any consequence. What are we going to do about organized crime in America that plays such a strong and, unfortunately, vibrant role in drug trafficking in America?

With that having been said, I look forward to hearing your testimony and the opportunity to try to give you more money. Thank you very much, General.

Senator MATHIAS. Senator Specter.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Attorney General, I welcome you here. I am delighted to see your task force moving ahead on the issue of violent crime. In this room when you had your confirmation hearing, you said that the issue of violent crime would be your number one priority, and I think that is exactly where it ought to be.

My own view is that the criminal justice system in this country has been an abject failure, and I say that with some 20 years of experience in the criminal courts, principally as a prosecuting attorney. There is a vast disparity as to what happens when someone is convicted of a crime of violence, what occurs on sentencing and what happens in this country on the issue of the career criminal.

I believe that there are significant initiatives which can be taken, and notwithstanding the often quoted statement that there is little which the Federal Government can do in the area of violent crime. After some considerable study on the matter over many years, I believe that it is time for the Federal Government to deal with the career criminal who commits so many of the burglaries and robberies which are the core of street crime in this country.

Once we had moved ahead with the President's economic package on budget cuts and tax reforms and the fall season came and the President addressed the crime subject and your task force reported, I introduced legislation which would deal with the career criminal, which would make it a Federal offense for anyone after previously being convicted of two or more burglaries or robberies to commit a subsequent burglary or robbery with the use of a firearm, which gives it the appropriate Federal nexus.

This is a subject that you and I have talked about generally and I have talked about this with your deputy, Mr. Schmults, and your associate deputy, Mr. Giuliani, and Assistant Attorney General for the Criminal Division, Mr. Jensen, and I think that the area of sentencing and career criminals is at the very top of the list.

I join with what Senator Biden has said on the issue of the budget cuts on the last round. Being a member of both this committee and the Appropriations Committee, I will resist the efforts to cut your budget because I think that when you look at the issue of violent crime, that is not a subject to be cut and this is not the time to cut it.

With those few comments, I am looking forward to your testimony.

Senator **Mathias**. Senator Leahy.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator **Leahy**. Mr. Chairman, I appreciate the courtesy to be here. I am not a member of this subcommittee, and furthermore, I am going to have to leave shortly hereafter because of a matter involving a foreign policy issue coming up next week that the administration wants to enlighten me further on. But I would hope in these hearings a few things are considered.

I have raised these points as one who has spent a quarter of his life directly in enforcement. During that time, I recall hearing every year various legislative bodies in my own State and others determine that they were going to get tough on crime and it is time to have people come out against crime.

I always wondered who the people were who were going to come out for crime. It is a gutsy issue to be against crime, and I am delighted that no one is going to be for crime. But usually their answer to how we are going to stop crime is we will increase the penalties, simply increase the penalties, and we will put more laws on the books.

Quite often penalties do need to be increased. Quite often there are areas where new laws are needed on the books. But very rarely will they say we will also give you the money for the training of the police, we will give you the money for the training of judges, the training of prosecutors, we will give you the added personnel, we will give you the tools to catch criminals.

It does no good for any of us, either as members of a legislative body or members of the executive, to stand up and give great speeches about how we are against crime. Anyone in public office is assumed to be against crime. It is far more important to fight to get the material necessary to stop crime.

I think that the task force report makes some valid recommendations of how to combat the problems of violent crime, but I am troubled at the same time that during the 8 months which it took you to produce the report, you and President Reagan rolled back the increases in the Justice Department FBI budget which President Carter recommended.

You and President Reagan have cut out money for training local law enforcement officers, which is one of the few ways that the Federal Government can have a real impact on violent street crime because, again, for 90 percent or more of the violent street crime, there is no Federal jurisdiction; there is local jurisdiction, and there local jurisdictions, sadly hampered by lack of funds, are looking to the Federal Government for help in training and money. And you have recommended that the juvenile justice program, a program designed to stop young offenders from developing into hardened, violent criminals, be eliminated completely. So I would hope that in these discussions that we can start on the premise that we are all against crime.

I have been the victim of criminals. I have been not only a direct victim of criminals but I have had my life threatened by criminals during the time I was a prosecutor. I have had people make attempts on my life. So, you know, I hold no ivory tower image of what criminals are. I detest criminals, I detest crime, but I also worry very much if we simply stand up and just say that and don't give the tools for to do anything about it.

So I would hope that we will start on the basis that we are all against criminals, all against crime, but then let's talk about where the money is going to go. How much of a commitment are we as a Government willing to make in money to combat crimes. Once the speeches stop, what is going to be left there for local law enforcement, for local judges, for local prosecutors, for local corrections officials?

I would also hope that in combating crime we don't surpass the constitutional limits of trying to change laws while saying that that is going to help stop crime, and not take the real steps that would.

On page 22 of your statement you say that "Arguably the interest of justice would be best served by the complete abolition of the exclusionary rule." Mr. Attorney General, I hope you really don't believe that. In the nearly 9 years that I prosecuted cases, I can't remember a single case where the exclusionary rule would have affected the outcome of that case. I know of no case where we actually lost one because of that.

I would say this, however: That if we don't give the money to train police officers to do the job right in the first place, then the exclusionary rule or any other rule, any constitutional limitation is going to be an impediment. If we train them well, then I think we can all live well within the Constitution and well within the way that the Constitution has been interpreted by our Supreme Court.

So I am delighted to have you here and I share your commitment to fighting crime.

Thank you, Mr. Chairman.

Senator **Mathias**. Senator Biden.

Senator **Biden**. Senator Kennedy has asked me to explain that he is not here because he is required to be in Boston today. He seeks your approval to submit to the Attorney General and his staff questions relating to the testimony on the crime force.

Senator **Mathias**. Without objection, it will be agreed that Senator Kennedy and other members of the committee can submit questions in writing, if the Attorney General entertains such questions, and the questions and responses will be made a part of the record.

Senator **Biden**. Thank you.

Senator **Mathias**. The committee is now privileged to hear from the Attorney General of the United States.

STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES, DEPARTMENT OF JUSTICE, ACCOMPANIED BY HON. RUDOLPH W. GIULIANI, ASSOCIATE ATTORNEY GENERAL; HON. D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; AND HON. JEFFREY HARRIS, DEPUTY ASSOCIATE ATTORNEY GENERAL

Attorney General **Smith**. Mr. Chairman and members of the committee, I have a prepared statement which I would like to make and which will parallel a good many of the remarks that have already been made. And then I would like, if the chairman is agreeable, to comment just briefly with respect to the task force.

Senator **Mathias**. Without objection, your full statement will be included in the record as if read, and you can summarize from it or comment on it as you wish.

Attorney General **Smith**. Thank you.

I appreciate the opportunity to testify today about the crime control program being initiated by President Reagan. The need for a comprehensive crime control program is enormous, for the scope of the crime problem staggers even hardened observers.

It comes as no news to many Americans that we have been losing the struggle against crime, losing it for years, for decades. Nothing that has been tried has worked well enough to stop the growth of crime, let alone reverse it. Crime has become such a fixture in our land that many seem to have become acclimated to it, the way we do to hurricanes and floods, and blizzards, acceptance, because there is nothing anyone can do about them.

And if we look at the facts of crime, we might almost be tempted to believe it. Vastly more offenses are committed than offenders ever caught. Far too many offenders are released because prosecutors are too busy, and far too many major cases are plea bargained today. Too many offenders are given probations or terms so small that they are meaningless.

We might also be tempted to believe that there is nothing we can do about crime, but not quite, for the fact is that we can do something about it if we care enough and if we are willing to work hard enough. It will not be easy and success is not just around the corner.

On the crime control front there is no light yet at the end of the tunnel. But we can begin, and we must, for there is always the real possibility that if we delay much longer crime may have grown so vast that it is beyond our ability to really contain it.

This administration's starting point on the subject is that what has been tried has not worked. One of the past efforts involved throwing money at the problem, vast amounts of money, billions of dollars. And where did it get us? The roadmap of that strategy led us to where we are today. Cities and suburbs of fear, homes and streets unsafe, offenders who commit the most ghastly crimes with impunity, often never caught, and if caught too often freed to commit the gravest of offenses all over again.

President Reagan pulled no punches when he told the Nation's police chiefs a few months ago that crime is an American epidemic. There has been a breakdown in the criminal justice system in America. The people are sickened and outraged.

The time has come to develop new strategies to combat crime. We propose nothing repressive, merely steps that are legal as well as effective. We propose to correct the present imbalance in the scales of justice, now so tipped in favor of the offender that the law-abiding side has been plunged into a swamp. The national consciousness would have to be unhinged in a pathological sense to accept any longer as a predetermined fact of life the grisly toll of suffering and fear that crime exacts today. And this administration is determined to not let those conditions continue.

As the President told the police chiefs, it is time for some plain talk about crime. Past efforts have failed. But this administration is now proposing a new array of strategies that will begin to make inroads on crime and violence.

I have submitted for the record a detailed statement that we would be happy to discuss with you point by point. Let me now mention some of its most important aspects:

First, we will fully coordinate Federal enforcement with State and local needs and resources.

Second, we will offer direct assistance to States and localities.

Third, we will greatly improve the effectiveness of all of our Federal efforts.

Fourth, we will take steps and make legally sound proposals to correct the imbalance that now favors lawlessness.

The administration is not proposing expenditures of vast sums. In the past such efforts bought us nothing of much value. Fiscal responsibility militates against unwise spending in view of our overall economic concerns, and we believe it is better to wait to see what programs work well before putting significant sums into new programs.

With imaginative new strategies and obtaining maximum results from the present resources, we believe we can make a substantial difference. The control and reduction of violent crime is a major priority. While most street crime does not come under Federal jurisdiction, we do have the leading role in the fight against narcotics, which causes vast numbers of violent offenses.

Here are some of the things we are doing in the drug area. New strategies are being developed for the Drug Enforcement Administration. For the first time in our history, the great expertise and ability of the FBI will be brought fully into play in the fight against drugs. An interagency task force on drug enforcement is being created by the President involving every Federal department and agency with any part to play.

Steps are being taken to use a long-neglected resource, the Navy, to help interdict drug traffickers headed to the United States in ships and planes. With information from Navy intelligence and radar sightings available to civilian law enforcement, we believe that the day will be ended when drug traffickers can enter this country virtually unimpeded with their cargoes of enslavement and death.

We will work for legislation that will permit us to enter into agreements with other nations that will lead to spraying narcotics crops with herbicides, and we will seek legislation that will permit using herbicides against marihuana in this country under carefully controlled circumstances.

As another major step against crime, I have directed the creation of law enforcement coordinating committees by all 94 U.S. attorneys covering the entire country. The U.S. attorneys will work closely with other Federal officials and State and local law enforcement agencies in defining the most important crime problems in the city, county, and State. Detailed plans will be developed to attack those problems and to share resources, plans that will be forwarded to Washington for review by my staff and then will be implemented.

We will encourage cross-designation of Federal and State prosecutors, and we are putting a high priority on selecting U.S. attorneys with prior prosecution experience.

Great emphasis is being placed on aid to States and localities facing significant shortage of space in their correctional institutions. In some States there is no more room to place new offenders who must be placed in custody, so some inmates are released before they should be freed in order to make space available.

It often takes up to 5 years to plan and build new prisons. To give assistance to States and to make that help available now, we have established a clearinghouse of surplus Federal property that could be used by the States for correctional purposes. A surplus military base has already been transferred to the State of New York that it will immediately open as a medium security prison. This can be done in a fraction of the time and at a fraction of the cost that it would take to build a new prison from scratch.

We expect several other properties to be made available to the States quite soon, and the Department, in cooperation with GSA, now has a list of some 546 surplus or excess Federal properties. Scores of inquiries have already come in from States and localities.

To enable States to do a better job in what facilities they already have, we have created the National Corrections Academy, which will train more than 2,100 State and local officials this year. The Bureau of Prisons has also started a program of training for local law enforcement officials, mostly sheriffs, to operate correctional facilities.

If we are to make inroads against crime, the tools for Federal law enforcement officers and prosecutors must be greatly improved, and this means the long-sought revision of the Federal criminal code, an effort that this administration heartily supports. We have worked closely with Congress in this effort. We hope, as I know you do, that the pioneering efforts of Chairman Thurmond and other members of the Judiciary Committee in what has been a landmark bipartisan program will soon be realized.

The new code will permit processing more cases without increasing personnel. Reform would mean that Federal prosecutors would have long-needed authority to fully prosecute a variety of serious and violent crimes.

As a part of our overall effort, bail practices must be reformed. Where there is convincing evidence, courts must be permitted to deny bail to persons who are a danger to the community. Bail must be denied to suspected offenders who on an earlier pretrial status committed a serious crime for which they were convicted.

And we need new procedures to use in cases where narcotics traffickers and others with vast sums of money at their disposal can post large cash bail that is little more than a business expense to them and then flee.

We seek proper constitutional changes in the exclusionary rule. Evidence should not be excluded from a criminal proceeding if obtained by a law enforcement officer acting in a good faith belief that he was in conformity with the fourth amendment.

Perhaps the interest of justice would be best served by the complete abolition of the exclusionary rule. At the very least, Congress should begin the process of reform by modifying the rule.

Efforts are being developed to bring resources to bear against the most dangerous offenders. A career criminal program is being planned for our new case management information system for U.S. attorneys. Plans are being made to assign special resources to track down the 300 most wanted fugitives, dangerous offenders, and major narcotics traffickers.

At times in the past the country has not only failed to lock the door against crime, it has gone a step further and given the criminals the key. A case in point is the Freedom of Information Act, which developed from pure motives no doubt, but which in practice has had a severe and adverse impact on law enforcement. Confidential informants hesitate or refuse to help law enforcement. Other sources are reluctant to give assistance, and an all-out belief exists that FOIA has meant a steady stream of information to offenders and criminal conspiracies that harms law enforcement and those who would help uphold the law.

It is time to stop such harmful practices. Our proposed amendments were submitted to the Congress a few days ago and explained in detail in testimony. I will not repeat that testimony now, except to say that our amendments would enable us to protect informants and protect confidential information that is essential to the proper functioning of our law enforcement program.

For grave offenses, appropriate penalties must be imposed. That is why we have adopted the far-reaching proposals of the Task Force on Violent Crime, which calls for a mandatory prison term for anyone using a firearm in the commission of a felony.

The complex operations of organized crime, narcotics trafficking, and labor-management racketeering cause vast damage to our country. To effectively counter them, we need a large array of new tools. In our legislative proposals, we call for new laws that would permit forfeiture of assets in organized crime and narcotics cases. Tax laws need to be reformed so that the Internal Revenue Service can once again assist with vital information that is available from no other source. And we need to strengthen statutes so that we can clearly get at a large number of racketeering and corruption offenses.

Our proposals are extensive, covering such matters as more appropriate sentencing, new efforts to aid victims and witnesses, arson control, food stamp and related fraud, faster fingerprint identification services for States and localities, a new enforcement web against an array of frauds in Government programs, and the support of Senator Thurmond's death penalty bill.

None of the efforts that we propose are going to be easy. None promises overnight success. The way will be difficult, indeed. In the fight against crime, we can expect frustration, disappointment, even more setbacks.

But we can also expect something else. If we are diligent we can expect eventual success. Last summer a respected police chief suggested that ineptitude and neglect by public officials in the fight against narcotics had meant that the country had lost an entire generation. In a larger sense, we have lost more than one generation of Americans to crime, to the fact of crime, and to the fear of crime. We have lost much of our freedom and our self-respect, to say nothing of vast numbers of lives and immense suffering.

The position of the Reagan administration is very simple. It is time to call a halt to all of that. We are going to do what we can to see that there are no more lost generations, not to narcotics nor to any other aspect of crime. This administration will attack crime with everything it can muster until justice and safety prevail once again.

Mr. Chairman, if I may, I might comment about the Task Force on Violent Crime. We certainly agree that that task force performed an admirable service, and in its assignment it performed a very important task and did so in a very speedy manner. Actually, in the first phase it was given 60 days to render a report on recommendations that could be implemented without additional legislative authority or additional funds. It was given 60 days more to render its report with respect to recommendations that would involve possibly additional spending and legislative changes, and it met that deadline.

The purpose of the task force was not to have another research study that would go on the shelves and gather dust. The people who are on that task force were people who had great background and experience in law enforcement, and I think their report demonstrates not only that great expertise but also a diligence and a wisdom that will be very valuable in this effort.

I want to say this about additional funds: In the course of not only that study but work since, we are well convinced that there are very significant innovative and different steps that can be taken that do not involve additional funding.

There were 15 recommendations in the first phase report. We have accepted and have implemented 12 of those. We intend to do the other three, but that takes longer because it involves other departments and other agencies.

As just examples of the kinds of things that can be done, that badly need to be done, that do not take additional funds, I might mention our local coordinating committees. In talking to prosecutors around the country at the local level, perhaps the foremost item that has been mentioned to me is the need for a coordination of effort between the Federal, the State, and the local law enforcement authorities in a given area, in the districts. We have instructed all of our U.S. attorneys that they are to take the lead in developing this kind of a coordinating effort, and as a matter of fact not only have they just been instructed to do that; there are going to be followup procedures to make sure that they do.

A great deal can be accomplished by pooling the resources of all of those agencies in that effort and then having them determine what the priorities are, what the Federal Government can do to most effectively assist in meeting their particular problems, and bringing to bear the combined forces.

This also involves, as I mentioned in my remarks here, cross-designation of prosecutors. In addition to that, as we all know, one of the principal problems that exists today in this area is lack of available prison space at the State and local level. One of the reports, one of the recommendations of the task force, was for a $2 billion funding to assist in that effort. We do not have $2 billion for that purpose at this point, but we do have something that could even be more important on a short-term basis.

A very good example of that happened just 2 weeks ago. We have, as recommended by the task force, put together an inventory of Federal properties that have either been abandoned or which could be made available for use for this purpose. Two weeks ago we transferred the Watertown facility to the State of New York for this purpose.

Now, had there been $2 billion available and had we made available to the State of New York its share of that $2 billion, it still would have taken the State of New York 5 years, according to our best estimates, to build a prison that would have provided the facility that they now have the immediate use of. So you can say in a very real way that implementing this recommendation in fact was more valuable to the State of New York than providing the State of New York with funds.

Reference was made earlier to training. We have established, without any additional budgetary authority, a national correctional academy in Denver, which is this year being started up to train lower level prison personnel. I was really quite surprised to find that the turnover rate of lower prison personnel sometimes reaches 80 percent. I do not see how any organization can be run with an 80 percent turnover or anything close to that.

The purpose of this particular proposal—and it came out of a task force recommendation—is to train lower level personnel and to try to cut down that turnover rate.

The National Institute of Corrections, which is already in place, is engaged in training law enforcement personnel, State and local, and in addition to that it is training personnel, supervisors, who themselves can go out and train others, so that the program will fan out.

So I want to say, I appreciate the thought that we should have additional funding. Obviously any agency, particularly law enforcement, can use additional resources. Nevertheless, we are committed to participating in the overall program, overall economic program. And I want to emphasize that there are innovative approaches, there are things that can be done, that will greatly assist in this effort but which do not call for additional funding.

Thank you very much.

I might say that—perhaps introduce to you the panel of people that we have here, who are very knowledgeable in the field of law enforcement: the Associate Attorney General, Rudy Giuliani; and the Assistant Attorney General in charge of the Criminal Division, Lowell Jensen; and the Deputy Associate Attorney General, Jeff Harris, to whom reference has already been made.

They are here and they are available to answer any of the specific questions that you may have, and I might say, I am aware that you received a more lengthy statement, not in time to really analyze it, and I want to make sure that all of these people will be available to answer questions at any time after you have had the opportunity to analyze that statement, if you would like.

Senator MATHIAS. Mr. Attorney General, what is your own time schedule?

Attorney General SMITH. I discover I am a little late now, but I will be happy to answer.

Senator MATHIAS. If you could stay with us just for a few minutes, and then because of the importance of this subject, not just to you and to me but to everyone, perhaps we can arrange a return engagement at which we can discuss it further, and meanwhile we can discuss it with your associates.

Attorney General SMITH. I would be happy to answer some questions now.

Senator MATHIAS. Do you recall, was it Benjamin Franklin who said, as the twig is bent so the tree is inclined? I am not sure. If he did not say it, he should have.

Attorney General SMITH. Somebody did.

Senator MATHIAS. This question of juvenile crime has been one that has troubled me in particular for many years, and of course it seems to me it is the very heart of the crime problem. And your task force I think produced results which would confirm that feeling.

They pointed out in the chapter on juvenile crime that in 1979 juveniles—and they cut that off at 18 years, up to 18 years—accounted for about 20 percent of all violent crime arrests, 44 percent of all serious property crime arrests, 39 percent of overall serious crime, 39 percent of overall crime arrests.

Youthful offenders, that is juveniles but including those between 18 and 20, accounted for 38 percent of all violent crime arrests, 52 percent of all serious property offenses, 57 percent of all serious crime arrests.

Now, when you consider that young people only constitute a little more than 13 percent of the entire population, you begin to understand the real difficulty of this part of the crime problem. In New York City there was a study made of 500 juvenile delinquents and that showed that only 6 percent of the study group were responsible for 82 percent of the violent offenses committed by the whole group. In other words, you get some very bad characters in this juvenile age category.

Now, we in this committee have devoted a lot of time and attention and concern over the juvenile problem, and the related problem, the closely related problem, of drugs. And I'm glad that you have mentioned both of these subjects in your statement.

In connection with drugs, you have the same kind of concentration on a few people. In a control group of 243 addicts in the city of Baltimore who were studied for 11 years, it was observed that they committed 500,000 crimes. So your emphasis on drugs is well taken.

But what concerns me a little—and I would like your comment—is the approach that we are taking to this area of criminal activity that we seem to agree should have a special focus. We have attempted, in the area of juvenile crime, to take measures which will prevent kids from getting into these serious problems, because the pattern seems to be that once they get into this trouble they never get out. The rate of repeating is astronomical. They get into some kind of a correctional institution, and it becomes a school for crime rather than a school for rehabilitation. So we have put our focus in the past on prevention.

Now, as I read the task force focus, it is taking the other direction. It is looking at apprehension and punishment as the prime object. Do I read it wrong or do I read it right?

Attorney General SMITH. I think you read it right. I think that this was the conclusion which the task force came to. I don't think, however, that having done so, that the task force was in any way intending to say that efforts should not be made toward prevention as well.

As you have indicated in the past, the direction has been in the way of prevention. But obviously, it has not worked, and the results show that it has not worked. So I am sure the task force came to the conclusion that other steps need to be taken as well, and I think that was the basis of that recommendation.

I do not think that in doing so, however, they are saying that we should give up our efforts to try to prevent. Obviously, prevention is an effort that we should continue to make and that we have to make.

Senator MATHIAS. So you are assuring us that the Department will continue to work toward these steps that can be taken in the prevention of—to prevent kids from slipping from simple behavioral problems, truancy and whatnot, and then going deeper and deeper and deeper as their problems are observed and can be corrected.

Attorney General SMITH. Well, it seems to me that the real key to this is, to the extent it is possible—and we don't know yet whether it is possible—but the real key to this is to find out what, in fact, works best, and to throw our resources in that direction or those directions.

We may never have the answer to that, and we may have to just keep trying in terms of both prevention and apprehension. But I am satisfied that the task force has concluded—and we agree—that new directions need to be taken, and that is the basis for that recommendation.

Senator MATHIAS. Are you going so far to say that you view the Office of Juvenile Justice as really a failure?

Attorney General SMITH. No, I am not saying that. And as a matter of fact, I am really probably not qualified to pass a judgment on that. We have not come to any conclusion that it is a failure. As you know, the position of the administration with respect to budget in this area did not have to do with whether the program was good or bad. It had to do with what level of government should work on the problem.

I do not think that represents any judgment, and we have not come to the effect that this program has not worked or should be abandoned.

Senator **Mathias**. Well, we would be very much interested in the kind of funding level you are willing to recommend for the prevention programs in the juvenile area. It seems to me that that is still a critical area, and I think every program, programs under the jurisdiction of the Department of Justice, the Department of Defense, and any other department of Government, ought to constantly be scrutinized as to whether or not they are effective.

If they are not, then they should be changed or abolished. I concur with that approach to administration of the Government. This is an area of such importance that I think we do not want to sacrifice the progress that has been made, and I think there has been some progress in this field.

But because your time is limited, I hope we can get back to the narcotics question, but I want to be fair to the other members of the committee and I will yield to Senator Biden.

Senator **Biden**. Thank you, Senator Mathias, I will limit my question to one, in light of the fact that you have to leave, General, and save my more specific questions for your colleagues.

There is, as you note in your task force report, a general agreement on most of the areas that you mentioned. The areas range from victims of crime and concern about them and concern for a criminal code, bail reform, posse comitatus, tax reform, mandatory prison terms, sentencing, which you did not have an opportunity to get into but I know your views on, drug enforcement, and the list goes on.

So I think that we are well on our way. I think that bodes well for us being able to come up with, and rapidly, a package of legislation here.

My one criticism is I fear that the proposals that you are making do not go far enough. And I do not merely mean in terms of dollars. I would like to put in perspective the dollars we are talking about here, when I and Senator Mathias and others say that we want to give you more.

I, like other members of the committee, sit on the budget committee. I realize that this additional 12-percent cut that we are looking for next year is not the last of those cuts. We all know that we have to find somewhere between $100 billion and $250 billion dollars in cuts in the next 3 years.

I would be much more at ease if I knew—and I am not asking you to be able to assure me of this—but if you could tell me that this is the last cut that your Department is going to take. But unless I am mistaken—and I think I know the budget figures all too well—this is not the last cut. There is a good deal more to go.

You are being asked to climb the mountain and the mountain is getting higher. First it was 6 percent, then 12 percent, and we are going to come down the line here where there is not much room but to cut more, unless there is a fundamental change in the idea toward taxes, which I do not expect the administration to make.

But having said that, let us put in perspective the breakdowns of the levels. I agree with you, and everyone agrees with you, I assume, that you do not just throw money indiscriminately at problems in this area. I know Senator Dole from his work on this committee and his interest in the whole question of prison construction.

But we are talking about things like the Drug Enforcement Agency being cut $27 million. Federal prisons being cut $28.5 million; FBI, $44 million; U.S. attorneys, $11.5 million. These all translate into things you are not spending money on. They translate into things like 50 or so fewer Customs agents in Miami and New York, where all the drugs are coming in. Just fewer people; fewer people to stand there and look at the bags.

It translates into the Coast Guard getting less money so that they just do not have ships that are literally as fast as the narcotics traffickers. They do not have as many ships as the bad guys, they are not as well equipped as the bad guys; they will lack pure raw materials. Can they catch the speeding boat? Their boats are not as good as the traffickers.

We are talking about coordination with the States' attorneys. Well, I think your suggestions are very innovative and good concerning coordination with local officials. But we are cutting the number of prosecutors. Unless you have something that I am unaware of, unless there is something innovative that you have really done with the dollars and convinced prosecutors to work for less I don't see how you will reduce crime.

I do not know about you but I had to go to 13 qualified attorneys in Delaware to get 1 truly qualified U.S. attorney because there was not enough money. We are looking for people with experience but we are not going to pay them more. That has been decided, although I know you think they should be paid more, or I assume you think that based on other statements you have made.

So the bottom line of all this is, and I want to make it clear, that this committee is not looking at just throwing money at the problem. We want to make sure you have enough prosecutors, and you're having to cut them, enough FBI agents, and you are cutting them. There are fewer agents, there are going to be fewer slots out there. If I read the budget numbers correctly, there are going to be fewer Customs agents, there is going to be fewer Coast Guard people, and so on.

Now, the President made a very, very good speech to the chiefs of police down in New Orleans. I think he captured the sentiment of the American people in the statements which he used in that speech. He said there is a thin, blue line that you, the police chiefs of America, represent between civility—and I forget the phrase—cannibalism or whatever, but it is true, by the way, that is exactly what it is. They are cannibals, they are cannibals, these people. With no regard for anybody's rights. None.

They have anesthetized society. I was in New York last weekend with a law-abiding citizen. We were sitting in a parked car in a taxicab at a light. I watched a young fellow, a tall, lanky guy, grab something and run down through the traffic. By the time I realized what he did, he had taken a purse away from a woman. He ran between our cars. I went to open the door to smash the door into him, and this law-abiding citizen who I was visiting for the weekend grabbed me and said, "Don't do that, you've got to be crazy." They have anesthetized society. We don't even want to get involved.

It seems as though the President does not think the thin blue line is thin enough, because he is saying fewer cops, fewer U.S. attorneys, fewer Customs agents, fewer people who are not in any innovative program like a university study about how we have to salve the psyche of those criminals. We are not talking about that; we are just talking about enough cops to go after the robbers.

And my question is this——

Attorney General **Smith**. I was afraid there would be a question in there somewhere. [Laughter.]

Senator **Biden**. Your statement talks about giving more jurisdiction to the local U.S. attorneys and greater coordination. How do we do that when we are cutting them $11.5 million? They cannot even do it all now, so how are they going to do it with fewer people?

Attorney General **Smith**. Well, Senator, I think I should answer that question this way. In any organization there are always ways to do things better. We are in the process now—and as a matter of fact, it may be a healthy process—of trying to find out how we can do the same things better with the same amount of money or even with less money.

I am completely satisfied—you mentioned the thin blue line—that if we reach the point where we are talking about cutting into muscle rather than developing greater efficiencies and more innovative approaches to things, that the President will certainly be well aware of that, and is not likely to approve any program that is going to, in fact, cut muscle.

Senator **Biden**. Well in light of your time constraint, I will yield. But let me say that I truly believe you are cutting muscle. You are cutting not only muscle but bone. I can assure you, I am presumptuous to say it, but I am sure you will find out that your U.S. attorneys are working hard. I assure you you will find out that your U.S. attorneys are qualified. I assure you you will find out that the problem is that your U.S. attorneys cannot physically handle the caseload.

There are just too many hardened criminals who have cases before them for them to be able to prosecute them, and that is why the FBI in 1982 of the cases that they took to the U.S. attorneys to be prosecuted, 60 percent, were dropped. No plea bargaining, no anything; just 60 percent were not pursued. And when we questioned the U.S. attorneys in Democratic and Republican administrations we found the same thing—the evidence will show that the overwhelming reason is they just do not have the time.

And when you talk about Miami, New York, and the other major drug centers of America, they cannot even begin to prosecute because they just do not have the people.

Thank you, Mr. Chairman.

Senator **Mathias**. Senator Specter has yielded in the order to the distinguished chairman of the Finance Committee, who is a member of the Judiciary Committee and who has to leave the hearing.

STATEMENT OF SENATOR ROBERT DOLE

Senator Dole. I just want to compliment the Attorney General, particularly with reference to his statements on tax law reform. And I note with interest you indicate you will be sending up legislation shortly to the Congress which will come to our committee.

I might add that we are very interested in—and we believe that the IRS can be very helpful. We are also taking a look on the staff level now at the so-called underground economy where we may be able to use some help from your Department.

If we could collect taxes from some of the people who avoid their tax, it might be able to ease the burden on some of these volunteers, the great majority that do pay their tax. When will that legislation be coming to Congress?

Attorney General Smith. Very soon. As a matter of fact, my statement and the more lengthy statement that I submitted this morning, contains our entire crime package. Part of it, of course, is in the criminal code itself, but the remainder will be sent up as soon as we can go through the necessary processes.

Senator Dole. Well, we certainly——

Attorney General Smith. We intend, to the extent that we can, to very aggressively support action in this area, and I think that with some obvious exceptions, I think that it has bipartisan support. We think that we should be very aggressive in getting something done in this area.

Senator Dole. I would just indicate that as the chairman of that committee, we will be very pleased to receive the proposal. We would offer a pledge to move as quickly as possible on hearings. We understand some of the problems in any legislation, as far as protection of rights of individuals. But as you have indicated, there are other rights that do not involve individuals that we may be able to review. We are going to be busily trying to raise some of that money that Senator Biden was discussing, I am concerned, too, about the budget cuts. Perhaps the air traffic controllers strike has not proved everything. But it has demonstrated that in many Federal agencies—there is a surplus of employees. The answer is not always hiring more people. Perhaps some could work harder, and I am certain that is going to be the emphasis in your operation.

Do I understand that there is no money recommended at all, even though the task force have recommended it for new prison construction, to deal with the overcrowding problem?

Attorney General Smith. No; we do not have funds for that purpose, although as I say, I think the program that we have adopted may, at least for the short term, be more valuable than money itself. I do not remember whether you were here or not when I mentioned the example of the Watertown facility that we have transferred to New York for prison purposes. Now, that one transfer provides the State of New York with additional prison facilities which they can use right now. So that in a very real sense, that is more valuable than money, because if we gave them money it would still take them another 5 years before they could build a similar facility.

And we have inventoried over 500 Federal properties. A significant number of those properties are not suitable now for this purpose, but a good many of them are and we are receiving—we have made that inventory available to the States, and we are receiving numerous inquiries from other States to see whether or not the same kind of thing can take place.

And if that program is run effectively, and if the facilities are appropriate enough, we may be able to do more in this area than we could do if we had that $2 billion.

Senator DOLE. Can I just finally ask, you are talking about short term, but do you still see some merit in the suggestions made by the task force which some of us have also made on this committee?

Attorney General SMITH. Oh, indeed.

Senator DOLE. Maybe this is not a solution but it is an effort to address the problem.

Attorney General SMITH. We do, indeed.

Senator DOLE. Thank you, thank you. Senator.

Senator MATHIAS. Senator Specter?

Senator SPECTER. Mr. Attorney General, do you agree with the thrust of State habitual criminal statutes which call for life sentences for those who are career criminals being convicted of three or four major felonies?

Attorney General SMITH. Yes, depending upon the circumstances.

Senator SPECTER. Do you agree, at least as a generalization, that the Federal courts are better equipped, or at least ought to be used, because of their facilities, to deal with the serious criminal charges against career criminals since as contrasted with many State courts the Federal courts have the ability to try such cases more promptly under the Speedy Trial Act, and because as a general practice tougher sentences come out of Federal courts than State courts?

Attorney General SMITH. Senator Specter, I am not sure I can agree with that. Again, it depends on the circumstances. I think we do have to recognize that crime, with obvious exceptions, is essentially a State and local matter, and I think that is where it should stay.

Our system of federalism requires, I think, that that be the case. And therefore, I would not be in favor of advocating a gradual takeover by the Federal courts of functions that should properly belong to the States. Now, I say that as a general proposition.

There are obviously areas where the Federal Government can be far more effective in this area than State and local. Of course, drugs is one of those and organized crime is another, and so on. So there—and as a matter of fact, our crime package contemplates the expansion of Federal jurisdiction in certain limited areas. Arson and murder for hire and other areas.

But I think we have to be careful that we do not convert the Federal system into an overall crime-fighting system. I think that basically it should stay with State and local.

Senator SPECTER. But you would agree with the thrust of using Federal jurisdiction on matters like RICO, racketeering interstate——

Attorney General SMITH. Oh, in specific situations, yes, very definitely. As a matter of fact, in a sense our proposal for cross-designation of prosecutors is designed to come to grips somewhat with that kind of a problem.

Senator SPECTER. And the Federal laws have been effective, as you note, for narcotics, at least as contrasted with what the State courts have been doing.

Attorney General SMITH. I think that if the Federal system does its job effectively, it can reduce the burden on the State and local law enforcement efforts. If it, in various areas—and that is one of the reasons why I think this coordinating effort in the various districts could be very valuable—because there, I think if the Federal end does its job well and does those things it can do best it will relieve some of the pressure on State and local agencies.

Senator SPECTER. Well, you will agree that the Federal courts have a better track record on speedy trials of criminal cases as propelled by the Federal Speedy Trial Act?

Attorney General SMITH. Well, it is a little hard to generalize. I suppose that would be true with some States. I am not sure if it is true with all States.

Senator SPECTER. And as to the issue of sentencing, would you concur that at least as a generalization that the sentences, as evidenced by the racketeering cases and the corruption cases and the bank robbery cases which come out of the Federal courts, have been tougher and more appropriate, at least on the generalization level, than in the State courts?

Attorney General SMITH. Yes. I have not seen any study on that that would support that, but that is my impression.

Senator SPECTER. Do you think that there is some room where we might have a carefully crafted statute as to career criminals who are multiple offenders committing many robberies and burglaries with an appropriate nexus where the use of a firearm is involved, which would give Federal jurisdiction to try and sentence those career criminals in the Federal courts?

Attorney General SMITH. I feel as strongly as you do about the career criminal situation and I certainly can say that we feel that we should do whatever is necessary to handle that problem. If that involves some expansion of what I have referred to as Federal jurisdiction, I am sure we will support that.

Senator SPECTER. Thank you very much. I know you are rushed for time, and we appreciate your being here.

Senator MATHIAS. General, just one final subject, to go back to narcotics.

In your statement you said that narcotics primarily come from countries other than the United States, and therefore, they present a menace that cannot be controlled. That tracks the findings of the task force which said that fully 90 percent of illegal drugs consumed in the United States come from abroad.

I am concerned by that statement. I do not challenge it because, one, I do not have a basis on which to challenge it, but do you reflect in that finding the difference between the vegetable drugs, which I think are primarily foreign origin—marihuana and other things—and psychedelic drugs that are widely produced industrially in this country and even in some cases can be produced by amateurs, produced in great quantities illegally and done under very informal circumstances?

Attorney General SMITH. The figure that I have is that, of the drugs that are imported into the country, we are able to interdict possibly 10 or 12 percent, but that figure does not include, I do not believe, the drugs that are chemically manufactured here.

Senator MATHIAS. So what you are referring to here is really the vegetable origin drugs that come from abroad.

Attorney General SMITH. Yes.

Senator MATHIAS. But we have this hideous problem, and one that in my observation just in my own circle of acquaintances, causes such enormous tragedy among young people where they get hold of PCB, they get hold of angel dust, they get hold of these mind bending drugs that very often result in death and whole lives ruined.

And I just want to be sure that we are working on the same wave length as far as narcotics are concerned.

Attorney General SMITH. As a matter of fact, I would suggest, Mr. Chairman, that Mr. Giuliani who is very familiar with that area could describe that situation more effectively than I could.

I do want to say this. I think that there is much more that can be done internationally than has been done up until now. This is one of the reasons we are creating this international or interagency task force on drugs. We have had very good results in certain areas. For example, with Mexico and marihuana. The results there are really dramatic. We have had very good results with Turkey, and we think that with a more intense effort, that perhaps that kind of result can be spread and better results achieved with some other countries.

Senator MATHIAS. Well, I think I can assure you that every member of the Senate Judiciary Committee will cooperate with you in this field fully, and in your efforts to reach out to get cooperation from other countries. I think that in other countries there is a very clear perception of what happens to their young people. This is a danger to a society that is greater than any external threat.

Attorney General SMITH. Indeed.

Senator MATHIAS. I think this has got to be one of the main areas of our concern.

Attorney General SMITH. As a matter of fact, I might just say it is not particularly apropos to your question, but we agree with that completely. This is one of the reasons why we are doing what we are doing in determining the degree to which the FBI can contribute to this effort.

Senator MATHIAS. But here is one area on this funding question—I do not think you can do this one on the cheap. Here is something that really is going to have to have some money spent on it.

Just take, for example, the other day—it has been several months ago—that we had a tragic accident onboard our carrier, and it was found that a number of the crewmen who were involved, were related in some way to that accident, had traces of marihuana in their systems.

We are slowly being educated on the fact that marihuana is a drug that, unlike alcohol for example, remains in the human body; that is cumulative in the human body, that it has a continuing effect and a continuing life in the human body. That is only found out by research, and research costs money.

And I think that is one example in the drug field. There was a time when people said well, marihuana is harmless. If you could have your martini, why can't I have my joint? You know, that kind of statement was widespread in American society. Now we know the answer. We have the answer to that but it costs money and it will continue to cost money. I hope that is one area there will be no attempt to cut the budget in.

Attorney General **SMITH**. We certainly all have a common goal, there is no question about that. I think we all recognize the importance of the problem in that area.

Senator **SPECTER**. Mr. Chairman, I wonder if I might have one final question. I was interested in your comment, Mr. Attorney General, on the use of the Navy in the battle against drug importation. While I have had some experience in the law enforcement field, I really do not know what the search-and-seizure rules are if you intercept a ship at sea. How do you anticipate using the Navy for that purpose?

Attorney General **SMITH**. Well, primarily intelligence.

Senator **SPECTER**. No stopping of ships at sea?

Attorney General **SMITH**. Well, we have not contemplated that as yet.

Senator **SPECTER**. Maybe missiles but no narcotics?

Attorney General **SMITH**. Maybe utilization of intelligence and utilization of facilities and resources that are there, and it could be valuable in this fight. It just does not make sense to have those resources there and not utilize them, particularly when you are combating a problem as important as this one.

Senator **MATHIAS**. You have opened up a whole can of worms now. The Attorney General could stay for a week and we would probably not exhaust it.

Take the Chesapeake Bay, with which I am familiar. It has a coastline five times as long as the coastline of California, with which you are familiar. Five times as long. When a vessel with a cargo of marihuana gets inside Cape Charles and Cape Henry, it is virtually impossible to find because of the bays, estuaries, and creeks and rivers.

This is an effort simply that has to be stepped up because when they come in, they do not bring a briefcase full of marihuana. I think the public sometimes thinks of drug smuggling in terms of these pictures you get of an airport where you have a briefcase full of heroin; but when they come in with marihuana it comes in by the ton; 20, 30, 50 tons at a time.

This is the picture that I think the American people have to be fully and realistically aware of, and this is the problem that faces you in coping with it. So you will find a high degree of cooperation here in that field.

Attorney General **SMITH**. Thank you.

Senator **MATHIAS**. If Mr. Giuliani and others would like to come to the table—and I hope, General, that as we study this program we can look forward to further communications with you.

Attorney General **SMITH**. I would be happy to do so, thank you.

Senator **MATHIAS**. How would you like to proceed?

Mr. **GIULIANI**. My name is Rudolph Giuliani, I am the Associate Attorney General. To my left is the Assistant Attorney General in charge of the Criminal Division, Lowell Jensen, and to my right, Deputy Associate Attorney General Jeffrey Harris, who was the Executive Director of the Task Force.

Senator **Mathias**. All of whom are well and favorably known to this committee.

Mr. **Giuliani**. We will proceed by answering any questions that you have.

Senator **Mathias**. Well, since we have started with the Attorney General and the narcotics question, the Attorney General made a speech last summer before the District Attorneys Association, and he mentioned there as he did this morning that it is time to channel the resources and expertise of the FBI in the fight against drugs.

So this has obviously been something that you just have not come up with this morning. What has physically actually been done in that field?

Mr. **Giuliani**. Mr. Chairman, approximately 3 months ago the Attorney General appointed a committee comprised of the Director of the FBI, Mr. Jensen, myself, Mr. Mullen who is the Acting Director of the Drug Enforcement Administration, and others in the department to study the issue of how we could, in an appropriate way, bring to bear the resources of the FBI in the drug enforcement effort.

Our committee is actually going to have its last session, hopefully, on Tuesday, and at least as a group we have come together on proposals for the Attorney General as to how to bring the FBI into the fight against drugs.

It would be premature for me to state at least our recommendations in detail, but I think I can sketch at least a general outline of what we found and where we are going.

We found that the Drug Enforcement Administration has, by and large, done a very, very effective job given its limited resources and its limited tools in dealing with the drug enforcement problem. That one of the big gaps is bringing into the fight against drugs some of the other agencies of government that have resources, have capabilities, have talents that can be applied. The FBI is one. And in three areas the FBI can be very, very useful in the fight against the drugs.

One of those is financial investigations, conducting investigations of those who finance drug trade. The FBI has a substantial number of agents and personnel to deal with that problem.

Senator **Mathias**. Well now, let me raise the distinction that I raised with the Attorney General. We have two kinds of drugs; we have the vegetable-based drugs and you have the chemical-based drugs, and the psychedelic drugs. Are you going to deal with the whole drug problem, or are you dividing up this responsibility in any way?

Mr. **Giuliani**. The Drug Enforcement Administration—I believe, the end result of this will be that the Drug Enforcement Administration will have the primary responsibility for dealing with drug enforcement problems, both aspects that you are mentioning. And that the FBI resources would be available to the Drug Enforcement Administration, in a coordinated way, to deal with specific problems, financial investigations, investigations of organized crime, wiretaps, situations like that where the FBI has manpower, expertise, available resources.

One example maybe would illustrate this better than a lot of rhetoric. In the city of Cincinnati there are, I believe, four drug enforcement agents and 53 FBI agents. It is impossible in the city of Cincinnati to conduct really sophisticated, substantial drug enforcement investigations without bringing in resources from outside that city. To do a title III wiretap requires the services of six or seven agents. The Drug Enforcement Administration in that city has four agents.

In the city of Pittsburgh, the Drug Enforcement Administration has, I believe, seven or eight agents. The FBI has approximately 160 agents. With a coordinated effort, it will be possible for the administrator of the Drug Enforcement Administration to call upon the FBI to assist in those places where the FBI either does not have the resources—or that was the DEA does not have the resources or the expertise to do the job, and the FBI will be able to pick that up and help.

Senator MATHIAS. Now, what you say makes great sense, I certainly would not challenge it. But like the old line, who is taking care of the caretaker's daughter when the caretaker is busy taking care? Now, when the FBI agents are out at the request of the Drug Enforcement Administration, helping to follow some lead, what is happening to the work that they otherwise would have been doing? Are you going to fund the FBI with additional funds to make up for these new responsibilities, or are you going to downgrade some of the jobs that they have been doing?

Mr. GIULIANI. I think that in each city that decision has to be made by the special agent in charge, in terms of his own priorities.

Senator MATHIAS. But the funding decision really has to come from you.

Mr. GIULIANI. The funding decision really cannot be made in the abstract. In any organization there are priorities. Take the city where there are four drug agents and 53 FBI agents. The question is, are all of those 53 FBI agents doing things that are more important than drug enforcement.

Senator MATHIAS. You are obviously right. You cannot tell in the abstract how many man hours this new program is going to require, and it may vary from year to year and from region to region. There may be a drug wave. Drug problems do hit communities, and there may be a drug wave in one community that will not be duplicated in another, or will not be repeated in the following year.

So there is going to have to be some recognition of that, and I am fully aware of that. But nonetheless, there are some averages involved that you can anticipate. You look at these crime figures, look at bank robberies which are going up through the roof. I do not think it would be good planning to do what is otherwise a good thing to do, to give the FBI expertise—to make that available to the drug enforcement authority, but it would not be good planning to do that without considering that there may be other gaps developing that need to be covered at the same time.

Mr. GIULIANI. I think that is a situation where we hope that these proposals are implemented. If they are and if the situation arises that the FBI is not able to perform missions that it regards as important, as the Attorney General said before, if we get to that stage there is no doubt that we would not—that we would come to you and we would come to the administration and we would seek the funds that we would need to do the job.

Senator **Mathias**. Well, you really have to keep that in mind I think in a very real way, because what good is it to increase defense spending if you are going to have a significant drug problem in the Armed Forces that you are not coping with? That is just fatuous.

I am not speaking from any knowledge of the level of drug abuse within the Armed Forces, but I am just saying that if you let that kind of thing get out of hand, you have not really achieved any economy. You have achieved a great defeat. And I think this is something that you do not want to be reluctant about coming to the Congress and saying, we are taking on this new responsibility; we are getting on top of the drug problem but we need help. And I think you would get a very favorable response here.

I think in any event, we ought to look very carefully at what kind of dilution of forces is going to be involved here, and you ought to talk to each other very frankly and very candidly about that. So that if it becomes apparent in a year's time that in order to perform this function you have to draw troops off of some other function, that we all understand exactly what is happening. Senator Specter?

Senator **Specter**. Thank you, very much, Mr. Chairman. Perhaps we could shift to you, Mr. Jensen. With your background as the district attorney of Alameda County with substantial similarities to work which I have done in Philadelphia, I would like to explore with you for a few minutes on the record this morning some things that we have talked about, as you and I and Mr. Giuliani and others have, to try to tackle some of the matters of common concern.

With respect to the issue of priorities, while there is grave concern over organized crime and loan sharking and drug trafficking, would you say that there is any higher priority on the law enforcement approach generally than the street crimes of robbery and burglary, as they are committed by career criminals who commit as many as two or three, or four dozen of those crimes?

Mr. **Jensen**. I think that your assessment is essentially correct. If you look at what goes on in local prosecutors' offices, by far the largest part of their serious crime prosecution will be in robberies and burglaries. Over the past several years we have been learning about the nature of criminals and efforts to concentrate on that specific area of enforcement have proven to be one of the most effective things we can do.

Senator **Specter**. With respect to the experiences that you have had in State prosecution that you have discussed with other prosecutors, as we have at National District Attorneys Association meetings across the country, would you say that it is a uniform, or at least a common, frustration among prosecuting attorneys as to the sentences which are handed out when we take serious cases involving recidivists into the courts and obtain convictions?

Mr. **Jensen**. I think as a general statement that is correct. There has been any number of movements in the area of sentencing that have addressed that, and they vary from State to State. I think as you have seen, there has been legislation to move into the area of mandatory sentences for offenders who use firearms in robberies, for example, and you have seen movements in States to get into aspects of determinate sentencing.

Those are part of the proposal that the Attorney General made this morning. What we can say is that there has been improvement in those areas from State to State, but it varies rather dramatically.

Senator SPECTER. And notwithstanding the improvement, that continues to be probably the most voiced frustration that the prosecutors face in the criminal justice system, is getting what we consider to be adequate——

Mr. JENSEN. Well, there are a lot of problems in this system and that is certainly one of the central problems, and it is one that, as I say, involves a lot of their attention.

Senator SPECTER. I know that even though Pennsylvania had an habitual criminal statute which called for a life sentence after four major felonies, that in the course of a dozen years of prosecuting serious crimes in Philadelphia, I could never get the habitual criminal statute imposed, in calling for a life sentence, even though many applications were made where the burglar had 18, 20 convictions, or a robber had a dozen or 14 robberies.

I add that bit of testimony from this side of the table as background on the issue of frustration. Mr. Jensen, would you say that the Federal efforts, for example, on RICO, moving into an area of law enforcement in which the Congress concluded State enforcement was insufficient, has RICO been an improvement and have those prosecutions come forward in Federal courts?

Mr. JENSEN. Yes, I think that is a valid assessment. As the Attorney General pointed out and I think you alluded to, there is a very sensitive area of the overlap in those areas that might be deemed intrusive, or that are areas that should be left to local prosecution. I think you identified it in terms of the way RICO has been developed as one where it is a valid Federal effort, and there are others.

Senator SPECTER. The racketeering effort has been more successful in part because the Federal resources have led to the speedier trials?

Mr. JENSEN. I think that is one part of it.

Senator SPECTER. And sentencing?

Mr. JENSEN. It also is a structure of enforcement that simply does not exist in many States. California has no RICO statute. So it is an effort that sometimes does not exist in the States at all.

Senator SPECTER. With respect to gambling and loan sharking, which the Federal Government prosecutes although there is a State jurisdiction, would you say again that there has been more effective prosecution in terms of faster prosecution, speedier trials, and better sentencing?

Mr. JENSEN. I think you might make that assessment. I think in that area you probably should look at the resources and their ability to look at large-scale operations. The local jurisdictions do not have that ability, and by using Federal resources where the criminal activity is multistate or multidistrict you are more effective in your enforcement.

Senator SPECTER. And as a generalization, where the Federal Government has stepped into the prosecution of local corruption cases, although you might expect that to be a matter peculiarly suited for States attorneys, wouldn't you say that the sentencing has been much tougher by the Federal courts and much more successful in North Jersey, say, for illustrative purposes?

Mr. JENSEN. I would not want to comment on areas of the country. My experience was, as a local prosecutor, we were every bit as aware of and concerned with and as effective in dealing with local corruption. I think it may vary, but local prosecutors do have the ability to do that. That is not to say it is not an appropriate kind of thing for Federal resources to look at, but there I think there is more of a balance than in these other areas we have talked about.

Senator SPECTER. With respect to the areas of those who leave correctional institutions, would you concur with the experience that I have found that it is a very common practice for someone to be released from a State correctional institution after serving a protracted period of time and to be released as a functional illiterate without a trade or skill?

Mr. JENSEN. That certainly occurs. It varies, of course, from place to place. I think what you can say is that is a problem that we should address, and I think your concern for that is appropriate.

Senator SPECTER. Do you think that that would be an appropriate area for hearings and perhaps legislation by the Congress to require that the States address the problem of turning out functional illiterates without a trade or skill?

Mr. JENSEN. Perhaps I could ask Mr. Harris to comment on that. That was specifically addressed by the task force.

Mr. HARRIS. Thank you, Senator. One thing I would like to say that is in the longer statement provided to you just shortly before the Attorney General spoke was a recommendation that the Vocational Education Act be amended to make it clear that those funds could be used for vocational education purposes in correctional systems. There is some question now as to whether those funds can be used for those purposes.

Senator SPECTER. What resources are available there to be applied to State correctional institutions?

Mr. HARRIS. There are a number of programs which could be funded from Vocational Education Act resources. But there are some courts which have interpreted the act as prohibiting the use of those funds in a correctional setting as opposed to a school setting.

We would like to make it clear that the act would permit the use of vocational educational funds to design programs for reading and writing and other skills in the vocational area inside the correctional setting.

Senator SPECTER. Did the task force conduct an investigation to make an assessment as to the adequacy or inadequacy of State correctional institutions in turning out, for example, functional illiterates who have no trade or skill?

Mr. HARRIS. The task force arrived at the conclusion that in a majority of States in this country, the overcrowding and substandard conditions are such that there is virtually no attempt being made to do anything about the illiteracy or, as a matter of fact, in any kind of program that might be termed rehabilitation, that it is not going on in a majority of the prison systems in this country.

Senator **Specter**. That would confirm what I have found. I have visited all of the State correctional institutions in Pennsylvania, and I found that there are no facilities available for vocational training or teaching basic reading and writing. So convicts held there for protracted periods of time are released, and it is no major surprise that they are right back into the criminal justice system as career criminals coming right back out, with no real attention being directed there. And you would say that that is a conclusion which you found to be generalized throughout the country?

Mr. **Harris**. Yes; I would say that as a general statement, that is what we found.

Senator **Specter**. Are you in a position to comment as to the adequacy of existing funds in the sources you referred to, to realistically tackle the problem on a nationwide basis?

Mr. **Harris**. Not really, Senator. Our primary concern is that at whatever level that act is funded at, that those funds be clearly available for use for correctional purposes. We did not really investigate the adequacy of the funds and, for example, how far they would go if it were clear that they could be used in correctional settings.

Senator **Specter**. On the subject of corrections, shifting gears just a bit, we have introduced legislation which would encourage the States to use their habitual offenders statutes with a sentence of life imprisonment where they deal truly with a career criminal, and have proposed that the Federal Government take over the responsibility for incarceration where it is essentially a situation where it is just detention, where there is pretty much an abandonment of hope of rehabilitation once you get to the career criminal stage.

What would your evaluation of such an approach be?

Mr. **Harris**. I note that the Federal Bureau of Prisons has 26,000 inmates and the number incarcerated around the country ranges in the neighborhood of 325,000 to 350,000.

I think that there is a danger that we face when we overpromise the abilities of the Federal Bureau of Prisons to ease the States' problems. For example, the Federal Bureau of Prisons has a smaller system, I believe, than the States of Texas, California, and New York, and so I am troubled with the notion. I do not really think that the Federal Bureau of Prisons offers the kind of solution to overcrowding that would be meaningful to most States.

Senator **Specter**. I am not really looking, Mr. Harris, on the issue of overcrowding. The surveys which we have made suggest that when about 1,800 Haitians are released, which may be imminent, that there would be opportunities to have some space within the Federal institutions, and it is not a matter generally to help the States out, but looking to a very specialized problem, really to provide some incentives for the States to deal with the habitual or career criminal.

It is really a matter of priorities, and my inquiry really goes to that; is there any higher priority than to encourage States to deal with habitual criminals?

Mr. HARRIS. Let me say two things. No. 1, I have seen your bill and I know the Department is studying it right now.

As to the question of general priorities, in my view there is no higher priority than effectively dealing with career criminals. They represent a small percentage of the criminal population that I think the statistics are excellent to prove commit a disproportionally large number of crimes. And I think that anyone's crime program in terms of reducing crime ought to focus on career criminals as the first order of priority.

Senator SPECTER. Well, I am glad to hear you say it just that way, as the first order of priority, because I certainly think that is where the critical problem is.

I would like to address one more subject if I may, Mr. Chairman, and that is to comment on something that Senator Mathias had commented on earlier and that is the juvenile offender. We held hearings yesterday in the Juvenile Justice Subcommittee on the subject of diagnosis and classification of the critical point in that crime cycle of the juvenile.

My experience has been that there is a pattern of the juvenile being a truant at 7 or 8, a vandal at 8 or 9, petty larceny at 10 or 11, burglary of a vacant building at 12 or 13, robbery at 15, and then robbery and murder at 17. With the question arising, is it possible to identify, and if so what is the critical point in that crime cycle, to apply resources, given the fact that we have limited resources, to take the juvenile out of that crime cycle.

And I wonder if you, Mr. Harris, or anyone on the panel would care to offer a suggestion as to whether it is possible and if so where?

Mr. HARRIS. Well, I think you pose what is the most difficult dilemma in criminal justice, and that is the area of juvenile crime. I believe—and this is a personal view——

Senator MATHIAS. Also the most vital area of criminal justice.

Mr. HARRIS. I think statistically there is an argument that can be made for that point and I would not argue with it, I would not take issue with it. But I believe that by the time most juveniles come to the attention of law enforcement authorities, having committed a serious crime, that it is too late, that it is too late to change the course of events.

I do agree with you that there are places, and I do not know precisely where on the continuum that place is that you have to intervene. But frankly, I think that the way our criminal justice system deals with juveniles is to largely ignore them until they commit a heinous crime, and even then too often we ignore them.

But by the time they have received the serious attention of the criminal justice system, in my view—and it may be a pessimistic one—I believe it is too late to change the course of events, and my view of it at that point is that the best that society can do, if in fact my view is correct, is to incapacitate them until they reach an age, until the statutory incapacitation allows, where they reach an age where they are no longer dangerous.

Senator SPECTER. The problem with that is that it is a relatively brief incapacitation, because you cannot keep somebody for a juvenile offense much beyond their 18th birthday under our system of law.

Mr. **Harris**. That in my view speaks to treating more juveniles who commit serious crimes under our adult statutes. You know, if you look at the incarceration by the ages of people in our society, you will find that up until—from the onset of crime up until age 35, people in prison represent a greater percentage than they do in the general population as a whole, and after 35 that is reversed.

And that would seem to indicate that there is what is known as—and I am sure you have heard it—as the burnout factor, that at a certain point in one's life the likelihood of committing further crimes is reduced. If in fact there is some validity to that notion and if in fact we are incapable of identifying juveniles early enough to keep them from a life of crime, there is a respectable theory which says that we are incarcerating the wrong people in our society.

Senator **Mathias**. That is kind of a reverse interpretation of Emerson's theory that if you have not carved your initials on the doorframe of fame by the time you are 35 that you are never going to put them there.

Mr. **Harris**. I admit that it is a rather pessimistic view of where we are, but what I have trouble with is finding governmental intervention at an early enough stage to do any good.

Senator **Specter**. Well, my own view is that it is an effort which we ought to make. And the testimony we heard yesterday would suggest that it may be somewhere in the 9 to 12 category and that there are ways to spot it.

The difficulty then arises with the resources to bring to bear on them. I believe when we are dealing with career criminals we have to throw away the key when we have found them committing rape, robberies, and burglaries. But I do not believe we can do that as a society unless we first have a realistic effort at rehabilitation, unless first we attack the juvenile problem in some meaningful way; and with the adult offender in jail, not release them as functional illiterates without a skill, but if we give an opportunity and the opportunity is not taken advantage of and the career criminal moves forward, then I think we are justified and really compelled to go to the life sentences.

But the line of the juvenile is very hard to diagnose and classify, and then I think even more difficult in terms of the application of resources. My own sense is that it is an easier matter to talk about the career criminals because you can identify a dozen burglaries and let the State courts have the first crack at it. Let them try them if they will. And if they will not, put them in Federal courts, where we have good reason to believe that the judges will really deal with it, the individual judge's calendar, no judge shopping, and put them away for life.

And I am very interested—I have learned today, not having had an opportunity to go through the voluminous materials on the vocational training idea you have, Mr. Harris—and I commend you on it, I think it is a good one and I will act on it. And perhaps my brother Mathias will join me.

Senator **Mathias**. I join you in that and I join you in your views on this question of dealing with juveniles. And the fact is we need to make an effort to identify the rehabilitative qualities in juve-

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niles, and it is a terribly difficult thing. It is subjective and anything that is subjective is very tough.

There is not any formula that I know of that you can just simply march these kids down a row and if they fit a certain profile you say, there they are. But it is too important for the whole of society and it is too important for the individuals involved not to make the effort.

And we will come back to that. I am sure we will have many discussions in that area.

Let me turn to another subject. We had a tragic case here some years ago in which Senator John Stennis was going home one night after a late session of the Senate and on his own doorstep he was held up and robbed, and after he had been robbed he was shot and very nearly died.

Last month a cousin of mine had an identical experience. He was held up on the street, he was robbed, he gave his wallet over, and after he had given his wallet they shot him in the head. He has survived and how he will cope with his head injuries only time will tell.

But these are the probems of handguns. Now, in 1972 the Senate passed the Saturday night special bill which would have outlawed the domestic sale or delivery of Saturday night specials. The task force has urged the closing of a loophole which allows the admission of handgun parts from abroad to be assembled in this country, but it has not said anything about the sale of Saturday night specials in this country.

What study was made as to the percentage of cheap weapons that find their way into the marketplace come through this loophole? And what percentage are domestic products sold here without any substantial restrictions?

Mr. HARRIS. I do not know the exact numbers, but the great majority of "Saturday night specials" come into this country via the importation of parts that are then assembled here. I do not have the exact number, but there are a very small number of domestically made "Saturday night specials."

Most of the cheap handguns imported in parts are put together in haphazard assembly plants.

Senator MATHIAS. You may not be able to answer this now, but I appreciate your following it up. As to the ratio between the two sources of weapons and how it may have changed in the last few years as international economic conditions have changed and the international markets have very radically changed, and also the rationale behind a restriction on the influx on parts for weapons when you do not control the domestic counterpart of the same weapon. In other words, are we protecting the local trade or are we trying to get at the problem of handguns that results in a John Stennis being shot in cold blood after he has already delivered his watch and his wallet to the robbers?

Mr. HARRIS. We will certainly try to get you some answers on those ratios and numbers, Senator.

Senator MATHIAS. In this field, I was interested that the task force did make certain recommendations, mandatory sentences, required reporting of theft or loss, a waiting period to purchase handguns, prohibition of importation of unassembled handgun parts, labeling of automatic weapons that can be easily converted, increased Federal involvement in the prosecution of gun crimes, development of new detection and apprehension methods.

Now, I will have to tell you that there are a lot of arguments in that list of recommendations. We have heard them all at this desk. But which of them is the administration going to espouse?

Mr. GIULIANI. At this point, Mr. Chairman, we have supported and proposed and advocated mandatory minimum sentences for those who use handguns in the commission of a crime. We have also implemented a proposal of the task force, I believe in the first phase, to more effectively prosecute and to give more emphasis to the prosecution of existing legislation.

The additional proposals that I would characterize as proposals to tighten up and to cure loopholes in existing law are still being studied and I do not have a final answer for you on those.

Senator MATHIAS. I have considered reintroducing the 1972 bill. I have not done it because we already have a pending bill in this committee on the subject and because I was waiting today to see what your attitudes were going to be on this subject.

If I were to introduce the bill that passed the Senate in 1972—I believe it passed through this committee very nearly unanimously. I do not know if the staff can confirm that or not, but with overwhelming support. I remember at that time the ranking Republican was Senator Roman Hruska. I think he supported it.

If I were to introduce that bill, what would the administration's attitude be?

Mr. GIULIANI. I do not think I could answer that question for you. I am not sure I am familiar with the bill, Mr. Chairman.

Senator MATHIAS. I will see that you get a copy of it, and then you let me know.

Mr. GIULIANI. I think that, as I said, we have implemented and have gone forward with some of the proposals. None of the rest has been rejected out of hand in any way. They are being studied.

Senator MATHIAS. They are pending?

Mr. GIULIANI. Yes; they are, that is right.

Senator MATHIAS. Now you have recommendations that deal with the possible implementation of a new criminal history system, and since we did not get this material in time to really look at that with great care—but this is a system in which I have been extremely interested over the years.

You say in the factsheet that was distributed this morning that the identification index was one of the task force recommendations and that the FBI has completed a 90-day preliminary test of the concept of the Interstate Identification Index. When will we have some comment on the results of that trial run?

Mr. JENSEN. We would be happy to put that in by way of a report to the committee, because that is an effort that is currently under way and the task force recommended that it be intensified.

Senator MATHIAS. Can you tell us today whether you consider that to be a successful trial?

Mr. JENSEN. That is being run by the NCIC, the National Crime Information Center. They have an advisory board. My information is that their review of that is that it is indeed a successful program in terms of experiments that have been done thus far.

Senator **Mathias**. Would you attempt to implement it without coming to the Congress for authorizing legislation?

Mr. **Jensen**. It is a question of what authorizing legislation is necessary.

Senator **Mathias**. That is what I am asking.

Mr. **Jensen**. As I recall, there was already an inquiry that would be responded to by coming to the Congress to explain what is developing there and its potentialities and its wisdom.

Senator **Mathias**. I am not even sure which committees in the Congress would have jurisdiction over this, whether it would be exclusively in this committee or whether some other committees would be involved.

Now, here is a question, and I hate to get back to baiting you on this funding issue, but with all of the Attorney General's good intentions about doing things without costing anything, this is the kind of thing that really costs money.

Mr. **Jensen**. No. Actually, Senator, this is one where the funding is not a great increment of new money. There is already a budget for NCIC. There is already a budget for handling rap sheet information within the Federal Bureau of Investigation. What this system contemplates is a much more efficient way of doing that and actually merging systems so that there is really not a new increase in incremental money.

Senator **Mathias**. And it would take advantage of the latest technologies in this area, which change every day?

Mr. **Jensen**. Yes. And fortunately it is one area where the technology is such that it becomes less expensive as we get into it.

Senator **Mathias**. If you go national and if there is a State component to this system, would they be expected to go it on their own or would you contemplate some Federal assistance in funding?

Mr. **Jensen**. In most areas the States already have criminal history systems in place and it is a question of sharing that information rather than creating new systems.

Senator **Mathias**. One of the facets of a system of this sort that has been of concern to me over the years is not only what good it can do, which is important, but what harm it could do.

Sometimes TV can be very constructive. There was a comedy not very long ago on television in which somebody's computer file was inadvertently publicized and a whole evening was spent unraveling the kind of problems that arose from that disclosure. The local welfare agency came in and picked up the children because the parents were unfit and all of their creditors descended on them, and I do not have to spin out the kind of problems that could occur and have occurred, not only on television comedies but in real life.

The State of New York was a pioneer in setting up a system of this sort and they early on developed the philosophy of how this system would be used and who would hold the key and under what circumstances the key would be delivered up to a third party and under what circumstances the local sheriff in Wyoming would be entitled to information that was in the system that had been derived from Massachusetts and that kind of philosophical question.

What thoughts do you have on that subject, as you refine and improve the system?

Mr. **Harris**. Senator, if I might answer that, one of the principal advantages that the task force found in representing this III, Interstate Identification Index, is that the Federal Government would not have in its files substantive information about anyone. What would happen is the system—if the State of Maryland would make an inquiry into the system and say, we are looking for information on John Doe, the Federal system would simply tell the State of Maryland that, you can find information on John Doe in the States of Idaho, New York and Indiana. It would then be up to the requesting State, Maryland, to go to each of those jurisdictions and request the information. Each of those jurisdictions would decide whether to release it in conformity with their own laws and their own policies.

This would not create a national data bank of substantive information. The release decisions would be retained by the State which has the information already.

I think the critical word in the new system is "index." That is what it would be, an index of persons and where their records are, rather than the information in the records.

Senator **Mathias**. Do you contemplate any guidelines for the use of the index?

Mr. **Harris**. The answer is, Yes, I think there would be. Right now if a State happens to know that another State has information on someone they are interested in, almost every State already has guidelines and rules, if not statutes, regarding their release to a sister State of information. Those are largely in place.

As to guidelines for querying the index to find out where this information lies, I am quite certain that the Bureau and the Department, in conjunction with the Congress and others, would be interested in developing appropriate guidelines.

Senator **Mathias**. Well, I am sure we on this committee would be very much interested in working with you as those guidelines unfold, because it is a subject that has been of continuing concern and interest to us.

I do not want to trespass on Senator Specter's time, but let me just take up two quick subjects. You put a heavy emphasis in the report and the Attorney General's statement today on incarceration: lock them up. Locking them up is obviously, as Senator Specter has said, necessary under some conditions. There are some people whom you have to just lock them up and throw away the key.

But locking them up is a pretty expensive process. What do you estimate it costs to keep a Federal prisoner today?

Mr. **Harris**. Senator, I would like to be able to verify this, lest I speak wrongly, but I believe it is in the neighborhood of about $10,000 or $12,000 a year.

Senator **Mathias**. Yes, I think it is at least $12,000 a year, which is precisely the cost of a year's tuition at Harvard University. It costs just as much to keep a prisoner in a Federal penitentiary as it does to keep a child at Harvard.

Mr. **Harris**. There are a lot of people who would say it is easier to get someone into Harvard than to get them into prison today.

Senator **Mathias**. How old is your oldest child?

Mr. **Harris**. Two and a half.

Senator MATHIAS. Well, you wait a couple of years and see if you are ready to make that statement. [Laughter.]

But it just emphasizes the fact that a lot of money is involved in incarceration. If you lock them up for 20 years, you are talking about a quarter of a million dollars in outlay at current rates.

Now, that ought not be the sole determining factor and I am not suggesting that it should. But somewhere along the line you have to think about alternatives to incarceration, perhaps more effective ones, in given chosen cases. I have not seen any discussion of alternatives.

Mr. GIULIANI. I think there is no doubt that what you say, Senator, is absolutely true. There have to be alternatives to incarceration. There have to be a whole realm of different types of incarceration available, from maximum security to minimum security. The Federal prison system I think is a fairly good model of that kind of a system. It is a flexible system that has a large number of alternatives available.

I agree totally with what you are saying, but I do not think that we can escape the end result, which is that there are people committing crimes that are dangerous to the public, that today are not put into jail because there is not room for them. We really have no choice until someone can come up with a lot better answers than we have today or are likely to have tomorrow, but to lock up large numbers of these people who are committing crimes who are not being locked up right now.

Senator MATHIAS. But you do believe, then, from what you just said, that an effective Federal anticrime program ought to include alternatives to incarceration?

Mr. GIULIANI. Absolutely, and I believe that it presently does and will continue to do it. The point that you and Senator Specter were making about illiteracy in American prisons and people leaving prisons illiterate makes absolutely no sense at all. Maybe we get ourselves all tied down into this debate over whether you can or cannot rehabilitate someone. I do not know if you can. I do not know the age at which you could start doing that and I do not know if it would work. I do not know if we would have the expertise and the ability to change someone's whole personality around, including their family situation, their social situation. I do not know if we can do that.

We may be able to do it, we may not be able to do it. We may be able to do it with 9 year olds and we may not be able to do it. I do not know the answer to that and it is not my area of expertise.

But I do not think that the people who are experts in this area know the answer to it, either. However, I do know that we can teach people to read and write, and I do know that that helps. It is not going to rehabilitate everyone. It is not going to turn them around. But it might cut slightly into that heavy recidivist rate.

Senator MATHIAS. Of course, you are touching now upon the terrible complexity of this whole problem. Why do not kids learn to read and write? That gets back to the funding of education. There is a disorder called dyslexia which is still a mystery in many ways and is thought to be involved in some way with the nervous system and the relation between the optic nerves and the brain, by which kids who are seriously affected read in reverse. An "R," instead of this way, it reads this way to them, and therefore they have great difficulties in learning to read.

They fall behind their class. They become—they feel inferior to the rest of the class and they react to this sense of inferiority with aggressive behavior. In given cases—certainly not every dyslectic child, but in given cases it can result in serious behavioral problems, perhaps becoming permanent and fixed in that child's character.

So this is why I go back to some emphasis on the need to look at the preventive side. If you come up with the conclusion—and I certainly agree with you wholeheartedly—that if you have an adult criminal who cannot read and write, it does not do much good to turn him out on the streets still not knowing how to read and write, because he is a prime target for recidivism.

But if you can also identify kids in school who are not able to read and write for some identifiable cause such as dyslexia and if there are methods, albeit expensive methods, by which they can get some remedial help, then you have to consider that really as part of the whole crime program, just as I consider dealing with the drug problem a part of the national security problem.

It is this full web of society that has to be considered. I do not mean to sit here and preach to you, because I know you are already well aware of these things, but I think we have to lay it on the record that responsible people in the Government are aware that this is the kind of complex fabric with which we deal.

Mr. GIULIANI. Maybe another way to look at it—and we are certainly well aware of it—is that the vast majority of people that are in prisons, Federal, State, and local, are going to come out of those prisons, and they are going to be back out on the streets. What we do with them——

Senator MATHIAS. Ninety-odd percent will return to the street. That is right.

Mr. GIULIANI. I think too often we think about programs in prison, we think about it as coddling criminals. I would prefer if we started thinking about money invested in making our streets safer, because most of these people are going to be back out on the street.

Senator MATHIAS. Absolutely. I support you 100 percent in that, and any programs, any positive programs that you bring here to this committee that move in that direction, I will support you on.

During the past week there was a dramatic case of a bank robbery which was foiled, and in the process fugitives from justice who had been at large for years were accidentally caught in the net. Their new crime brought them to justice where they can be accountable for their old crimes.

Now, the task force put a lot of emphasis on apprehending fugitives, and in recommendation 43 they say: "We recommend that the Attorney General seek a significantly increased level of funding for this important activity. The Attorney General should direct that the highest priority be given to the apprehension of violence-prone fugitives, major drug traffickers, and others who have committed similarly serious offenses."

Well, the episode of the past week is a perfect illustration of the fact that that was a pretty accurate assessment of a problem.

How much importance does the Department place on that recommendation and why is the statement silent on this subject today?

Mr. GIULIANI. The Department places very heavy emphasis on this whole area of fugitives. I think that the reason that the statement is silent on it is basically because we are in the process of trying to make some decisions as to where that responsibility should be lodged in the Department of Justice. Should it be kept the way it is now, with the FBI and the U.S. marshals sharing responsibility for it, or should it be placed in one organization?

That is one of those recommendations that the Attorney General alluded to when he said that it would require input from other agencies of Government as well, particularly the client agencies who brought them service. That is something we hope to have an answer on in the next few weeks, but it was not one that we were prepared to answer by today. There is no doubt that a very, very high priority has to be given to searching for fugitives.

The bail recommendations of the task force that we had implemented and the legislation that we have supported is part of that as well. There are 3,000 drug fugitives and less than 2,000 drug agents. Many people in the situations that are arrested in drug cases, heroin and other drug cases, have available such large amounts of cash that it is impossible to assure their return if we set bail at almost any number.

We have had people recently skip bond who have put up bail of $500,000, $750,000 in cash, and then they leave and go to a foreign country and they cannot be found.

That whole area is one that will receive very, very heavy emphasis. The FBI and the Drug Enforcement Administration is working on a plan to try to share both agents and intelligence in searching for drug fugitives. I think there is no doubt that this is an area where five or six things have to be done to affect it, including Congress acting on the bail reform bills that are before it.

Senator MATHIAS. Now, on another subject—and do not be concerned; we are all going to get lunch here shortly. But on another subject, the task force expressed concern over the amount of time it takes the FBI to respond to requests for identification checks, including those for fingerprints and arrest record information. The report says that the FBI position is that the average response time for an identification check is 25 days. Some say longer.

In short, the report urges that steps be taken to reduce the delay. Do you share that concern?

Mr. JENSEN. I share the concern. But those are averages in statistics. The case you referred would show that that can be done in specific cases with a much quicker turnaround. So when you look at that, there may be cases that do that, but I think that it is possible to get a response back. That gets into this whole area of the information handling in the data processing equipment of the FBI.

Mr. GIULIANI. One of the things that the Bureau has done is suspend for I think it is a 1-year period providing fingerprint services to private entities, where that was being supplied up until now free of charge, and using those resources——

Senator MATHIAS. Private entities such as?

Mr. GIULIANI. Such as banks, businesses that want to determine whether the people they are employing have criminal records. That was being done free of charge and contributing to the delay factor.

Also the point that Mr. Jensen mentions, targeting and separating out emergency and expedited requests where time is really of the essence from the routine requests.

Senator MATHIAS. You propose stopping such services to banks or do you propose charging for it?

Mr. GIULIANI. Charging. They are going to stop for 1 year, reorganize it, and then there will be a fee for the service. That will accomplish two things: It will help to fund it, and private entities should pay for this kind of service; and second, it will put some discipline on the process. I think one of the things that the Bureau encountered was that since it was free of charge everyone would ask, even though it really was not that important.

Senator MATHIAS. Do you agree with the task force that the FBI ought to give higher priority to identification procedures?

Mr. HARRIS. One of the principal problems, it seems, for the best part of the last 15 years, the Bureau has been working toward computerizing their identification procedures. Continuation of that process and bringing it to a conclusion would substantially assist in being able to process such requests more routinely, and we think that is an effort that has to finally occur.

Senator MATHIAS. One of the things that concerns the committee is that this seems to be in such direct contradiction with the budget. It is estimated the loss of 278 work years as a result of the hiring freeze will negate substantially the benefits derived from the suspension action. Not only will the suspensions effected be reduced by 65 percent, but the improvement of service to criminal justice users will not be realized and the FBI will have to consider the planned resumption of Public Law 92-544 services in October of 1982.

The loss of these funds will stop any effort in fiscal year 1982 to automate the latent fingerprint system and in other automation areas the identification divisions will be placed in the position of operating the system vital to providing this service on either prototype or marginal capacity equipment.

Mr. HARRIS. I think that within the Bureau you have to order your priorities, and when money is short you have to decide where it can best be applied, and that is the process that we are engaged in now. There is no question that, you know, would it be that we had funds to do it immediately, and I think that the Bureau is looking at their priorities within the Department, and we are going to try to insure that the functions that make the most sense get the most dollars.

Mr. GIULIANI. There are really some healthy aspects to this and this may be a good illustration of one. For years, without any concentration on the amount of money thrown into law enforcement budgets, particularly the FBI, these services have been provided free of charge. That makes no sense at all, for a private profit-making enterprise to obtain a service like this for nothing. It is not the function of Government and it is one of those things that has been layered on.

And going through a discipline like this, looking at how you can accomplish things, realistically accomplish things, is helpful. Now, when we get to the point where some harm is created by that, then we have reached the point where we have to ask for more funds.

Senator **MATHIAS**. Well, the whole question of user fees is going to be much discussed in Congress as it affects the use of harbors and channels and apparently fingerprints, and I am sure a number of other things. So I do not know that we ought to spend too much time on it this morning. But it is an essential service, the availability of this service. That is our immediate concern.

Some years ago, I think precisely 10 years ago, this committee approved an amendment to the LEAA enabling legislation which led to the promulgation by LEAA of privacy and security regulations which have governed State and local systems in dealing with information or in dealing at least with systems that were funded through LEAA sources.

Now, if LEAA is on the way out—and this gets back to the question of the index—if LEAA is on the way out, do you contemplate some legislation—and I am talking about Department guidelines, but legislation that could replace the LEAA?

Mr. **JENSEN**. If I may, I think the guidelines address that in virtually the same way as the LEAA. The NCIC, as I indicated before, has an advisory board that develops security and privacy guidelines in that respect.

Senator **MATHIAS**. But my question is, do you contemplate proposing that in legislative form?

Mr. **JENSEN**. I do not think we have the present intention to do that, only if it appeared that legislation were absolutely necessary to security and privacy within that operation.

Senator **MATHIAS**. The reason it may be necessary is that, while we have such perfect confidence in you, we do not know who your successors will be and in the fullness of time there will be a successor.

Mr. **JENSEN**. With all due respect, there are subsequent legislatures.

Senator **MATHIAS**. It is a little harder to change a law, which requires the signature of the President of the United States, than it is for a bureaucrat downtown to change a regulation.

Mr. **JENSEN**. I stand corrected.

If I may, Senator, I do have to have another engagement and I would like to take leave.

Senator **MATHIAS**. All right. Well, in honor of your departure, let me give you the last question, because it deals with a question that you and I have discussed before across this table.

Today I heard the Department say that, while arguably the interest of justice would be best served by the complete abolition of the exclusionary rule, in any event the exclusionary rule should at least be modified. And then as I recall, you went on to say that you supported a good-faith exception to the rule.

Mr. **JENSEN**. Yes.

Senator **MATHIAS**. This was the question left open in our last conversation.

Mr. **JENSEN**. That is correct.

Senator **MATHIAS**. Is this the last and final word on that subject?

Mr. **Jensen**. The word is this. As I had indicated, we would review and we would bring to the committee a position on this, and the position is stated by the Attorney General and it is that we will not support abolition. We will ask and request legislation for a "good faith" exception, based on the *U.S.* v. *Williams* case. So that would be our request, not for abolition.

Senator **Mathias**. We appreciate that full and final response. I am glad that question is settled.

Enjoy your lunch. Thank you, gentlemen.

[The prepared statement of Attorney General Smith follows:]

STATEMENT

OF

WILLIAM FRENCH SMITH
ATTORNEY GENERAL

Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear before this Subcommittee to discuss the Administration's legislative program for providing effective protection against the menace of crime in our society.

In our view, crime, and particularly violent crime, is one of the most serious social problems we face today. I will not burden you with the statistics; they were set forth by the President in his recent address to the International Association of Chiefs of Police, a copy of which I have attached to this statement. What they amount to is this: last year, about one out of every three households in the country was victimized by some form of serious crime. If this trend continues, within a few years every family in America will personally experience the outrage of violent crime. The question will not be whether, but when, each of us will become a victim.

Of course, no sensible person supposes that we can eradicate crime; it is as old as mankind. But while we cannot expect a crime-free society, we should be able to reduce the amount of crime far below its current level, and reduce its burden as well. That is what the criminal justice system has been trying to do, but overall it has failed.

To put it bluntly, our methods of protecting ourselves and our society from criminal attacks are simply ineffective. It is elementary that one certain way to help ensure our safety is to prevent crime, and that the most effective way to deter criminal activity is by swift and certain punishment.

Yet only a fraction of lawbreakers are being apprehended today; the number that the system is able to prosecute is even smaller; and, of those, relatively few are sent to prison. The sorry fact is that our system is sorely strained even to achieve such minimal results. That strain is in part a product of the legal inefficiencies that over the years have been absorbed into the system.

But inefficiency is not the only problem. We have also become timid and reluctant to assert vigorously our rights as a society. Some rights of law-abiding Americans are so fundamental that they cry out for protection. They include the right to be free from personal violence in our homes, on our streets, in our schools, and at our jobs. They include the right to have effective measures taken to prevent our being robbed, beaten, raped, or murdered. They include the right to expect prompt and certain punishment of those who violate the law. And they include the right to civilized and compassionate treatment when we have fallen victim to a lawbreaker.

The legislative initiatives we are supporting and proposing are designed to remove the inefficiences that plague the criminal justice system and to protect our common rights as a society while preserving the fundamental rights of individuals. Given the scope of the problem, our program is necessarily far-reaching; it calls for vigorous action directed to the entire spectrum of the criminal justice process. But our program is not hastily conceived; to the contrary, it is the product of careful study and deliberation, and it takes into account the four basic considerations essential to effective action. These are:

First, the need to adopt a systematic, coordinated national strategy that enables us to do more than simply react to crises of the moment, and that recognizes that changes in one area of the system will be felt in other areas. For example, it will do us no good in the long run to apprehend more offenders if our laws do not provide appropriate penalties or if our prisons cannot accommodate those who deserve to be locked up.

Second, the need to preserve sound principles of federalism. We must bear in mind that under our federal system of government, the states have primary authority for dealing with most crimes committed within their borders, and that includes the vast majority of violent crimes. The federal government's law enforcement authority is limited to violations of federal law. The federal government should not and cannot usurp the primary criminal justice authority of the states. But that does not mean each must go its separate way, paying no heed to how it might assist the other in such a matter of common concern. Rather, for our mutual benefit, we must be flexible, and must organize, operate, and coordinate our law enforcement efforts as efficiently as possible.

Third, the need to use available criminal justice resources to maximum advantage. This is particularly critical given existing budgetary constraints. We will simply have to do a better job with what we have. Whether we succeed will depend in great measure on the availability of the law enforcement improvements contained in our legislative program.

And the fourth need is the need to take action immediately. Every day produces yet more victims. Many of the most fundamental reforms called for have been in the process of development and refinement for years. There is widespread support for their adoption, and many of them were recently endorsed by the Task Force I appointed earlier this year to study, and make recommendation concerning, the federal government's role in combatting violent crime. That group, under the distinguished and able leadership of Judge Griffin

Bell and Governor James Thompson, also recommended additional measures that appear promising. A copy of the Task Force report is attached to this statement. Our job now is to translate these various proposals into action.

1. Federal Criminal Law Reform

There is no better place to begin than by reforming the federal criminal laws.

Federal criminal laws are supposed to provide a solid foundation for the criminal justice system. Today, they do not. They are simply a disorderly array of statutes that have been enacted haphazardly over the past two hundred years. Many are confusing, out-of-date, or unenforceable. Beyond that, they leave unwarranted gaps in our ability to prosecute such serious criminal offenses as murder, arson, and crimes against federal officials.

To remedy this situation, soon after taking office I directed the Department to work closely with the Congress to enact a new Federal Criminal Code. S. 1630, the initial product of that cooperative effort, was introduced in the Senate with broad bipartisan support last month. I have already expressed the Administration's support for its enactment; a copy of my statement to that effect before the full Committee on the Judiciary is attached.

The new Code will clarify and simplify the federal criminal laws, make their application more efficient, and more importantly, allow greater flexibility in investigating and prosecuting crime at the federal level. More than that, it will facilitate many of the most important and most basic reforms we so urgently need. In my earlier testimony, I outlined the major law enforcement improvements contained in the bill, emphasizing improvements that would help the federal government meet the problems of violent crime. For now I would like to concentrate on those provisions directed at the pervasive menace of organized crime.

The last major legislative initiative against organized crime occurred more than a decade ago with the passage of the Organized Crime Control Act of 1970. Yet, despite the improved law enforcement tools provided by that legislation, organized crime has continued to flourish. Stronger measures are plainly needed to contain this blight, and they are provided in the Code.

Under the Code, substantive federal law would be broadened to enhance federal prosecution of such typical organized crime offenses as large-scale arson for profit, murder for hire, trafficking in pirated videotapes and sound recordings, forgery and counterfeiting of state securities, and retaliating against victims and witnesses in federal proceedings. The brokers and promoters of organized crime offenses would be subject to prosecution under the Code's facilitation and solicitation provisions, and organized crime leaders could be prosecuted for the new offense of operating a racketeering syndicate.

The Code's potential utility against organized crime offenders is also reflected in its penalty provisions. For example, the penalty for conspiracy would be the same as the penalty for the most serious offense that was an object of the conspiracy; the penalties for trafficking in smuggled or stolen goods would be equivalent to those for smuggling or stealing the goods; penalties for trafficking in heroin, cocaine, or PCP would be increased; and true mandatory minimum prison terms would be provided for heroin dealers and persons who use a firearm in the commission of a crime. In addition, maximum fine levels would be increased dramatically, and the existing forfeiture provisions applicable to racketeering offenses, including narcotics offenses, would be broadened to reach any traceable proceeds derived from a racketeering enterprise, as well as property of equivalent value if the defendant concealed or commingled the proceeds or placed them beyond the court's jurisdiction.

Finally with respect to organized crime offenses, the Code would require that the sentencing guidelines promulgated by the Sentencing Commission provide a substantial term of imprisonment for recidivists, career criminals, drug traffickers, and organized crime leaders, and would permit the government to appeal sentences that are unreasonably low.

Of course the Code's law enforcement advances are not limited to the organized crime area. They also include fundamental reform of federal bail laws, and more effective provisions for dealing with juvenile crime, as well as added protection from violent attacks for a wide variety of federal officials and for innocent bystanders endangered during the course of attacks on federal officials.

In addition, the federal government has a fundamental responsibility to investigate and prosecute political corruption cases, frauds and misconduct involving the nation's financial institutions, and other complex white collar crimes that defy the ability of state and local governments operating under more limited jurisdictional constraints to deal with effectively. The provisions of the Code would aid in assisting the federal government to meet its responsibilities in all these areas, both by creating certain new offenses and jurisdictional bases, as well as through additions in the arsenal of sentencing alternatives available to vindicate and deter such crimes.

2. Narcotics Enforcement

Of all crimes committed today, narcotics trafficking is without doubt the most harmful to our society. Drugs make victims not only of those who are addicted to them, but also of the countless persons who are assaulted, robbed and burglarized by addicts in order to obtain the enormous sums of money necessary to feed the addict's habit. Narcotics trafficking frequently involves violence; it invariably breeds violence; it unquestionably causes acute misery and, in many instances, death. It also generates huge profits that can be used to avoid detection and prosecution. Finally, since narcotics primarily come from countries other than the United States, they present a menace that cannot be controlled by state and local efforts, or even by federal efforts within this country. While there clearly is no simple answer to our enormous crime problem, control of narcotics trafficking is certainly one of the single most important steps that we can take to reduce crime.

What is called for to support the Administration's strategy to cripple the international and domestic drug traffic is legislative action in two areas.

a. Posse Comitatus Amendments.

Under existing law, 18 U.S.C. 1385, the Army and Air Force are severely limited in the support which they can provide to civilian law enforcement authorities. Analogous restraints have been imposed by regulation upon the Navy and Marine Corps. These limitations are salutary to the extent that they prohibit military authorities from actively engaging in civilian law enforcement duties that would place armed military forces in direct confrontational contact with civilians. But the limitations of the Posse Comitatus Act in some instances go to nonsensical extremes and restrict appropriate forms of military assistance to civilian law enforcement. For example, military radar and related communications equipment is constantly in operation monitoring the air space and seas surrounding the United States to detect hostile aircraft and ships. Information derived from such monitoring would greatly assist civilian agencies in detecting and interdicting aircraft and vessels smuggling illicit drugs, other contraband and illegal aliens into the United States. Yet the Posse Comitatus Act has been interpreted in such a way as to create artificial barriers to the exchange of such information.

The Department of Justice has endorsed Section 915 of S. 815 to clarify that military authorities may assist civilian law enforcement authorities in indirect ways such as furnishing of information, loans of equipment, and training. We also support those provisions of the similar House bill (Subsections 375(a) and (b) of Sec. 908, H.R. 3519) which would go beyond the Senate bill by authorizing military personnel assistance in the maintenance of equipment loaned to civilian law enforcement, in the operation of radar and related communications equipment, and in the operation of other military equipment outside the land areas of the United States. These bills have been approved by the Senate and House of Representatives respectively and are presently pending before a Conference Committee.

Enactment of this legislation would enhance appropriate military support for civilian law enforcement, particularly in the national effort to stem the tide of illegal drugs flooding the United States, while at the same time preserving the historic separation of civilian and military functions. This Administration is well aware of the potential dangers raised by military involvement in civilian law enforcement. Nevertheless, we believe that such military involvement, subject to certain restrictions, does no violence to the principles underlying the Posse Comitatus Act.

b. Use of Herbicides to Eradicate Foreign and Domestic Marijuana Crops

The most efficient and effective way to control narcotics is by eradicating them at their source. With respect to marijuana, source eradication is possible through use of herbicides such as paraquat, a product used widely to suppress weeds in connection with the production of agricultural crops. In this regard, I note that the Attorney General of Florida testified before the Task Force on Violent Crime that 61,000 pounds of paraquat were used last year on Florida's agricultural crops. Although paraquat has been thoroughly tested and approved as safe for use as a herbicide, considerable controversey has developed regarding the potential health impact should marijuana which has been treated with herbicides be harvested and sold to consumers.

While we appreciate the health concerns surrounding herbicide use, we believe them to be speculative for two reasons. First, there is no clear evidence that herbicide-treated marijuana poses any significantly greater health hazard than non-treated marijuana. Second, herbicides destroy marijuana crops within a matter of days with the result that it is unlikely that any significant volume of treated marijuana will find its way to consumers. Moreover, we believe that the long-term health effects of marijuana use, particularly use by young people, many of whom are pre-teenage children, are such a serious health threat as to justify herbicide use as a means of curbing the national marijuana problem.

In furtherance of our goal to eradicate marijuana at its source, the Department of Justice is considering two separate legislative proposals. The first proposal would repeal the existing restriction upon assistance to foreign governments for herbicide spraying programs. The second would expressly authorize federal officials to conduct, and to assist states in conducting marijuana eradication programs through herbicide use.

3. Bail Reform

Despite the fact that violent crime has reached alarming proportions, and we know that much of this crime is committed by habitual offenders, federal bail laws fail to give our courts the authority to make responsible release determinations with respect to dangerous offenders. Under present law, the only issue a judge may consider in setting pretrial release conditions is whether the defendant will appear for trial.

While the Bail Reform Act of 1966 did much to improve the fairness and rationality of release decisions, fifteen years of experience with the Act have demonstrated that, in some important respects, it does not give the courts the authority to make appropriate bail determinations. This Administration, like many in the Congress, the judiciary, the law enforcement community, and the public at large, believes that there is an urgent need for legislation to improve federal bail laws.

Federal judges and magistrates must be given the tools to make bail determinations that not only assure the integrity of the judicial process but also the safety of the community as well. To accomplish this goal, we recommend the following changes in current law.

- The courts must be given the authority to deny bail to those persons who are found by facts established by clear and convincing evidence to present a danger to particular persons or the community. We believe that the courts can identify those defendants who will pose grave risks to community safety, and that the only responsible decision with respect to such persons is an order of detention. Furthermore, it is our view that bail should be denied to persons accused of a serious crime who have previously been convicted of another serious crime committed while on pre-trial release. Such persons have, by their own conduct, clearly demonstrated their dangerousness and their inability to abide by the law while on bail.

- Existing case law defining the authority of the courts to detain defendants as to whom no conditions of release will assure their appearance at trial should be codified.
- We should reverse the current standard presumptively favoring release of convicted persons awaiting imposition or execution of sentence or appealing their convictions. Present law is not only at odds with the fact that a conviction is presumptively valid at law -- a principle borne out by the extremely low reversal rate of federal criminal convictions -- but it also undermines the deterrent effect of a conviction e.g., when a convicted narcotics trafficker, following the return of a guilty verdict or the imposition of a substantial prison sentence, is freed to return to the community.
- The government should be given statutory authority to appeal release decisions correlative to the defendant's right to appeal. The government should be given the opportunity to correct often hastily made release decisions that permit defendants to flee the jurisdiction of the courts or to commit further crimes while on release.
- The law should require defendants to refrain from criminal activity as a mandatory condition of obtaining release. In light of the problem of bail crime, we must stress as to released defendants society's legimitate expectation that all its citizens be law abiding.

We must also provide adequate deterrents to flight to avoid prosecution by making the present penalties for bail jumping more closely proportionate to the penalties for the offense with which the defendant was charged when released.

- In addition, courts should be given specific statutory authority to inquire into the source of money or other property offered to fulfill financial conditions of release and to refuse to accept money or property if it appears that because of its source, it will not reasonably assure the appearance of the defendant at trial. Often the proceeds of crime are used to finance the bond and forfeiture is in fact anticipated as the cost of avoiding prosecution.

Several bills have been introduced in the Congress this year that address some of the problems I have discussed. In the Senate, S. 1554 and S. 1630, whose sponsors include Senator Thurmond and several other members of the Judiciary Committee, come the closest to accomplishing the kind of comprehensive reform of our bail laws that we believe is necessary. Congressman Sawyer has introduced a similar bill, H.R. 4362, in the House. In many respects, these bills would achieve the improvements that I have discussed above.

I do note however, that S. 1554, like the release provisions of the Criminal Code Reform bill, would abolish the use of money bond, a novel approach about which we have reservations. Many believe that the money bond condition has been misused by some judges who have imposed high money bond as a means of achieving the detention of defendants who are poor bail risks, and it is our understanding that the proposal to do away with money bond stems from the concern that as long as it remains an option, this misuse may continue.

Although the money bond condition may be occasionally abused, it seems an excessive reaction to abolish it altogether in light of both experience and logic indicating that it can, in some cases, be an effective tool for assuring appearance. Moreover, the extent of abuse may well decline once federal judges are presented with a lawful alternative -- preventive detention -- for considering dangerousness. Thus we recommend that S. 1554 and S. 1630 be amended to retain the availability of money bond.

4. Corrections

The more effective our fight against crime is, the more violent criminals will be off the streets and behind bars, as long as there is sufficient space to house them. The truth is, however, that criminals are already straining the resources of states, where prisons, often old and decrepit, are seriously overcrowded.

We simply cannot accept situations where judges do not send criminals to prison out of fear that there is no space for them, or where dangerous prisoners are released prematurely back into society in order to make room for new ones.

a. Federal Property and Administrative Services Act Amendments

In recognition of the need to assist states and localities, the Task Force on Violent Crime recommended that I support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to permit the conveyance or lease at no cost of appropriate surplus federal property to state and local governments for correctional purposes. We support this recommendation. S. 1422 would provide for the acquisition of surplus federal property by the states at no cost for criminal justice facilities.

Although the Department of Justice supports the general intent of S. 1422, we do have some amendments to propose. We are currently working with the General Services Administration on suggested revisions, which we will be transmitting to the Senate Committee on Governmental Affairs.

b. Vocational Education Act Amendments

As our Chief Justice has noted, criminals must one day return to society and it is a wise investment to make our prisons habitable places where prisoners can receive vocational training to enable them to be responsible citizens. A wide variety of efforts have been made in recent years to explore ways to strengthen vocational training programs in correctional institutions. A recent effort, sponsored by the National Advisory Council on Vocational Education, involved a series of regional hearings. Over 100 witnesses, representing a wide variety of interests, contributed oral as well as written testimony. There was overwhelming consensus that vocational and educational programs can promote positive life styles in individual prisoners and can contribute substantially toward their chances of employment on release. The Advisory Council recommended, and we concur in this recommendation, that incarcerated offenders be identified as a primary group to receive federal support in vocational education programs.

There is at present no pending legislation to amend the Vocational Education Act. However, proposed legislative amendments are in the process of being developed.

5. Housing Federal Detainees in Local Jails and State Prisons

A major problem faced by the United States Marshals Service is the burdensome contractual processes required by the Federal Procurement Regulations. The United States Marshals Service must rely to a large degree on local jail facilities for the housing of federal detainees. Unfortunately, jails in a number of jurisdictions throughout the nation are seriously overcrowded. As a result of this overcrowding, over

100 local detention facilities have placed ceilings on the number of federal detainees they will accept.

Compounding the problem is the fact that local jail administrators must contend with complicated and cumbersome federal contracts in order to house federal detainees. Many local jail operations are not in a condition physically, economically, or administratively to comply with contract stipulations.

To overcome these obstacles the Task Force on Violent Crime recommended that I seek a waiver of the requirements of the Federal Procurement Regulations for contracts entered into for temporary housing of federal prisoners in local detention facilities and should seek legislation to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) to establish and authorize the use of intergovernmental agreements with local governments for detention space and services for federal prisoners.

The Office of Management and Budget (OMB) has proposed legislation, S. 892, to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95-224), to extend the authorization to grant exceptions to the Act thereby permitting the use of intergovernmental agreements with local governments for detention space and services for federal detainees. We support this legislation.

6. Exclusionary Rule

The Fourth Amendment exclusionary rule is a judicially created remedy under which any evidence and the fruits of such evidence are automatically barred from introduction at a defendant's trial if the evidence is determined by the court to have been obtained as a result of an unconstitutional search or seizure. While the rule is designed to deter unlawful searches and promote respect for the law by police officers, the effect of its application is often to engender disrespect for the law in the mind of the police and the public alike. When the rule is applied in the case of a trivial violation or mistake by the police as to whether the requirements of the law have been complied with, and results in the acquittal of a criminal guilty of a serious crime, the lack of proportionality of the sanction applied to the officer's mistake is so great that the confidence of the public in our system of justice cannot help but be eroded. The rule has a distorting effect on our system of justice where the central purpose is to ensure that the guilty are convicted and the innocent are acquitted. Rather than achieve this purpose, application of the rule signifies that a court has been diverted from the crucial question of guilt or innocence of the defendant and has turned instead to a consideration of the conduct of law enforcement officers in obtaining the very evidence that can often answer that fundamental question.

The Department testified recently before this Subcommittee in support of the recommendation of the Violent Crime Task Force that called for a legislative modification of the rule so that evidence obtained in violation of the Fourth Amendment would not be excluded from a criminal proceeding if it was obtained by an officer acting in the reasonable, good faith belief that his actions were lawful. In that testimony we noted that the reasonable, good faith approach recommended by the Task Force is largely based on the ruling by the Fifth Circuit en banc in United States v. Williams, 622 F.2d 830 (1980), cert. denied, 101 S. Ct. 946 (1981), following an exhaustive analysis of relevant Supreme Court cases.

Arguably, the interests of justice would be best served by the complete abolition of the exclusionary rule. In any event, the exclusionary rule should at least be modified.

Clearly good-faith efforts by law enforcement, though found technically deficient later, should not result in a court's excluding evidence of a crime. Congress should modify the rule so that evidence would not be excluded when it was obtained with a reasonable, good-faith belief of conformity with the Fourth Amendment.

The Department has concluded that the Congress can, and indeed should, act to limit the exclusionary rule in the context of the Fourth Amendment. This conclusion is based, as was Williams, on modern Supreme Court cases that hold that the sole or primary purpose of the rule today is to deter unlawful police conduct.

Permit me to briefly outline this position. Some early cases dealing with the rule indicated that "judicial integrity" required the courts to exclude evidence improperly seized. This rationale has, however, been largely abandoned because it proves too much. Logically extended, it would require that improperly seized evidence be held inadmissible for purposes of impeachment and it would mean elimination of the requirement that no person other than the one whose privacy rights were infringed has standing to ask for the invocation of the rule. Yet the Court has refused to apply the rule in the case of evidence used for impeachment, Walder v. United States, 347 U.S. 62 (1954), and the recent standing cases such as Rakas v. Illinois, 349 U.S. 128 (1978), and United States v. Payner, 447 U.S. 727 (1980), reemphasize that only a person aggrieved by an allegedly unlawful search or seizure can invoke the rule.

Moreover, in Payner the Court stated significantly that its "cases have consistenly recognized that unbending application of the exclusionary sanction to enforce ideals of government rectitude would impede unacceptably the truth-finding functions of the judge and jury." 447 U.S. 727. Modern cases turn on a balancing of deterrence against the harm done to the truth-finding process when the rule is applied. For example, in Stone v. Powell, 428 U.S. 465 (1976), the issue was whether to apply the rule to cases in which state prisoners who had previously been given the opportunity to seek application of the rule in state courts could again seeks its invocation when they collaterally attacked their convictions on federal habeas corpus. In holding that such search and seizure claims were not available on collateral attack, the Court in Stone alluded to the well known costs of applying the rule, noting that it "deflects the truth-finding process and frees the guilty." 428 U.S. 465, 490. The question whether the rule should be applied in a particular context, such as collateral relief from Fourth Amendment violations, is answered "by weighing the utility of the exclusionary rule against the costs of extending it." 428 U.S. 465, 489.

In addition, there is substantial doubt about whether the rule actually deters. The complexity and volume of appellate cases making up the "law" of search and seizure suggest that it does not. The Supreme Court seems to be moving toward applying the rule only when the conduct of the police is capable of being deterred and refusing to apply it, for example, in cases of an arrest pursuant to a good faith reliance on a statute or rule later declared invalid. Michigan v. DeFillippo, 443 U.S. 31, United States v. Peltier, 422 U.S. 531. Moreover to the minor degree that "judicial integrity" may still be a factor supporting the exclusionary rule generally, it is significant that the Court stated in Peltier that "judicial integrity is not offended if law enforcement officials reasonably believed in good faith that their conduct was in accordance with the law." Id. at 538. Thus our proposal to exempt reasonable, good faith searches and seizures from the operation of the rule is consistent with both the deterrence and judicial integrity principles that underlie the rule today.

In these circumstances, the social costs of applying the rule in terms of the exclusion of reliable evidence from criminal proceedings and the consequent acquittals of guilty defendants are balanced by no legitimate policy interest. The case for the proposal to enact a reasonable, good faith limitation on the application of the Fourth Amendment exclusionary rule is thus overwhelming, and we are developing a legislative proposal implementing this approach on which we will urge prompt and favorable action by the Congress.

7. Guns

One of the most significant recommendations of the Task Force on Violent Crime was that there should be a mandatory sentence of imprisonment for the use of a firearm in the commission of a federal felony. At least five bills presently before the Senate Judiciary Committee would seek to accomplish this, and S. 1630 provides in Section 1823 for the mandatory sentencing to imprisonment for the use, display, or possession of a firearm during a federal crime of violence.

The idea of mandatory sentencing for the use or possession of a firearm during a federal crime is not new, and in fact seems to have been the intention of the Congress in enacting the legislation that became the present Section 924(c) of Title 18 in 1968. The sentence provided for under Section 924(c) is in addition to that for the underlying felony and is from one to ten years for a first conviction and from two to twenty five years for a subsequent conviction. However, Section 924(c) is drafted in such a way that a person may still be given a suspended sentence or be placed on probation for his first violation of this section and it is ambiguous as to whether the sentence for a first violation may be made to run concurrently with that for the underlying offense.

Some courts have held that a concurrent sentence may be given. See United States v. Sudduth, 457 F.2d 1198 (9th Cir. 1972), and United States v. Gaines, 594 F.2d 541 (6th Cir. 1979). In addition, even if a person is sentenced to imprisonment under Section 924(c), the normal parole eligibility rules apply.

The pending Senate bills, S. 903, S. 909, S. 972, S. 494 and S. 1185, all attempt in various ways to overcome the problems with the language of Section 924(c). However, all have one or more problems such as the failure to negate the possibility of parole, or the inclusion of matters unrelated to mandatory sentencing.

Consequently, we will strongly support mandatory minimum sentences for the use, display, or possession of a firearm during and in relation to the commission of a federal crime of violence as part of the Criminal Code Reform bill. Such a sentence will be required to run consecutively to any other term of imprisonment and the defendant will not be eligible for probation. Parole will be eliminated as it is for all offenses under the new Code.

Meanwhile, we are carefully reviewing the remaining Task Force on Violent Crime recommendations. Furthermore, in an additional effort to disarm the criminals of this country I am instructing the United States Attorneys to enforce vigorously the existing federal firearms laws. We will be working with the various law enforcement agencies in other departments as necessary to ensure that we are supported in this effort.

8. Habeas Corpus Reform

Equally in need of reform are the federal laws governing habeas corpus, the process by which federal and state prisoners are permitted -- for years after their appeals have ended and long after one would expect the case to be closed -- to continue to flood the courts with petitions objecting to their convictions. In 1980, the federal courts had to deal with some 8,000 of these petitions from state and federal prisoners. All but a handful of these petitions were denied.

The greatest single deterrent to crime, swift and sure punishment for guilty offenders, is undermined by the present unending availability of the federal writ of habeas corpus. This writ is frequently used by prisoners in a ceaseless effort to set aside their state convictions. In resolving issues raised in these cases, federal courts often relitigate issues already decided in state proceedings, thus creating a delicate problem in federalism. Moreover, when convictions are occasionally set aside many years after conviction, retrial of the defendant is extremely difficult, if not impossible. The end result is the expenditure of large amounts of resources and a lack of confidence among the public in general and the victims of crime in particular in the criminal justice system's ability to protect their rights with certainty. There must be, at some point, finality in judgement.

While it is certainly important to guard against wrongful convictions, it is wasteful and counter-productive to provide additional review when there is no good reason to suppose that such review will produce a more just result. For these reasons, we have undertaken a careful review of the various habeas corpus reform proposals that have been advanced by the Task Force on Violent Crime and others.

We are developing within the Department legislation that will make provision for greater deference to state processes, accord more appropriate weight to the interest in finality in criminal cases, and effect technical improvements in federal habeas procedure. Our proposals should reduce the substantial commitment of federal and state resources presently required in dealing with applications for federal habeas corpus.

9. Juveniles and Youthful Offenders

Next, we must address the problem of crime committed by juveniles and young adults. The amount of serious and violent crime committed by these groups is appalling. In 1979, juvenile offenders (those up to eighteen years of age) and youthful offenders (those aged eighteen to twenty-one) together accounted for more than half of all serious crime arrests, more than one third of all violent crime arrests, and nearly two thirds of all serious property crime arrests. A small proportion of these youths commit an astonishing number of repeat offenses. In New York City, for example, a study of 500 juvenile delinquents showed that six percent were responsible for 82 percent of the violent offenses committed by the whole group. Much of the violence is attributable to more than 2,000 youth gangs, with close to 100,000 members located in some 300 American cities and towns.

Plainly, we must act more vigorously to contain these youthful and habitual offenders. The recommendations of the Violent Crime Task Force and proposals contained in the Federal Criminal Code point the way.

We must begin by ceasing to treat as children young people whose serious criminal behavior belies their age. The federal courts should be allowed to proceed against all juveniles who commit federal crimes, and adult prosecution should be permitted if the offender is at least seventeen years old or is charged with a violent felony or trafficking in drugs. We recommend that S. 1630 be amended to provide the former authority, and we support the provisions to the latter effect that are already incorporated in the proposed Criminal Code. Additionally, we recommend that Section 5038 of the Juvenile Justice and Delinquency Prevention Act be amended to provide for fingerprinting and photographing of all juveniles convicted of serious crimes in federal courts.

10. Arson

The Task Force recommended that 18 U.S.C. 844(i) be amended to allow federal authorities to investigate arson fires of buildings used in or affecting interstate commerce started by any means, not just those fires started by a device that meets the definition of "explosive," as is the case under current law.

At present, 18 U.S.C. 844(i) proscribes the damage or destruction by means of an explosive of any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. For purposes of Section 844(i), "explosive" is defined so far as is relevant here as "any chemical compound, mechanical mixture, or device that contains any oxidyzing and combustible units ... in such proportions ... that ignition by fire ... may cause an explosion." The problem centers around whether gasoline, kerosene, and similar liquids, meet the definition if they are simply poured out and lighted, a common way to "torch" a building. While it is our view that when gasoline vaporizes and combines with air (an oxidizing unit) a mechanical mixture constituting an explosive is created, the legislative history of the statute is unclear as to whether this broad interpretation of the section is warranted. The statute was passed in 1970 in response to the wave of campus bombings and other radical activity of that era and was not specifically designed to deal with arsons.

Some courts have refused to accept such a theory and have dismissed counts charging violations of 844(i) by means of poured gasoline. *See*, *e.g.*, *United States* v. *Birchfield*, 486 F. Supp. 137 (M.D. Tenn. 1980). There re unreported cases to the contrary, such as *United States* v. *Allyn B. Hepp*, No. 80-1840, (8th Cir. Aug. 14, 1981) but proving that gasoline vapor is in such a state as to constitute an explosive is often difficult for investigators to establish and explain to a jury. This burdensome requirement should be eliminated and we will support legislation amending 18 U.S.C. 844(i) in the context of the Criminal Code Reform Bill.

11. Tax Law Reform

The Internal Revenue Service (IRS) has traditionally been one of the nation's most effective law enforcement agencies, particularly in piecing together the complex puzzle of financial transactions which so often mask tax fraud or non-tax crimes. Moreover, much of the information collected and developed by the IRS is invaluable in connection with the investigation and prosecution of non-tax crimes involving large sums of money, particularly organized crime, narcotics trafficking and white collar crime. But the Tax Reform Act of 1976, intended to protect taxpayer privacy, created a chasm between the IRS and other federal law enforcement agencies and placed needlessly cumbersome restrictions upon federal investigators and prosecutors legitimately seeking access to tax information for use in cases of serious non-tax crime.

Although we recognize the importance of protecting against abuses of tax information, we believe that a series of amendments are needed to the 1976 law to fine-tune tax disclosure procedures so as to achieve the delicate balance which the Congress sought to establish between legitimate law enforcement needs and individual privacy interests. The amendments needed include clarification of ambiguities in the law, proper distinction between the privacy rights of individuals as contrasted with those of corporations and other legal entities, conformance of statutory requirements with actual practice, elimination of the requirement that federal prosecutors obtain Washington approval before seeking disclosures of tax information, expansion of the number of instances in which the IRS may initiate reports of non-tax crimes, authorization of disclosures of tax information in life-threatening and other emergency situations, and authorization for federal prosecutors to redisclose tax information to state and local prosecutors upon entry of a court order finding that such information constitutes evidence of a state felony offense.

We have developed a comprehensive package of tax disclosure amendments containing these and other provisions. Our proposal will be submitted to the Congress shortly. In summary, the proposal will be very similar to S. 732 but will include proposed amendments to Sections 7602 and 7609 of the Internal Revenue Code relative to the procedures by which IRS obtains information. In view of the strong support in the Senate for tax disclosure amendments, we are optimistic that needed amendments can be enacted during the 97th Congress. Again, the Task Force on Violent Crime recommended enactment of the amendments which we will be submitting for Congressional review.

12. Crimes Against Federal Officials

In the area of crimes against federal officials, the Violent Crime Task Force reommended, among other things, that the Department support legislation to make the murder, kidnapping, or assault of certain high level government officials not now protected by federal statutes (e.g., Cabinet officers) a federal offense. It also recommended that such crimes against any other federal public servant while engaged in or on account of the performance of his official duties should be a federal crime. We concur in these recommendations, since it seems clear that there is a substantial federal interest in vindicating such attacks through the extension of federal jurisdiction to prosecute these crimes. These proposals are already receiving active consideration in Congress. S. 1630, the proposed new Federal Criminal Code, would continue federal jurisdiction over serious attacks against the President, Vice President, and Members of Congress by defining them as "United States officials;" it would also cover attacks against a Supreme Court Justice or Cabinet officer by including them in the definition of that same term. Such offenses would be federal crimes as is now the case with respect to the attacks on the President, Vice President and Members of Congress, without a showing that the crime was motivated by the victim's status. Furthermore, we propose that this class be broadened to include all federal judges.

In addition, S. 1630 adopts the other recommendation of the Task Force concerning crimes against federal public servants at any level of responsibility and extends federal jurisdiction over violent crimes against federal judges, federal law enforcement officers, and any other federal public servants designated for coverage under regulations issued by the Attorney General when engaged in the performance of official duties.

We have also concluded that the threat of attacks against Cabinet officers and top echelon White House staff members is so great that separate legislation apart from the Federal Criminal Code bill (which carries a substantially delayed effective date) is necessary to protect these persons. As the Committee will recall, the Department testified in support of these proposals during this Subcommittee's recent hearing on S. 904, introduced by Senator Quayle, designed to protect Presidential and Vice Presidential staff, and S. 907, introduced by Senator Thurmond, designed to protect Cabinet officers. We also suggested in that testimony that a violent crime against a Supreme Court Justice should now be made a federal offense. It is my understanding that our suggestions are being considered by the Subcommittee and that there is reason to expect that a bill will be reported in the near future.

The Task Force also recommended legislation to assert federal jurisdiction over the offenses of murder, kidnapping, or assault on a state law enforcement officer or private citizen committed in the course of a similar attack on the President or Vice President. The Task Force was justifiably concerned that exclusive state jurisdiction over such an offense would result in dual state and federal investigations and prosecutions of the same case. This in turn would cause problems in the handling of evidence and pretrial procedures and result in greatly weakened cases. S. 1630 would eliminate such problems since it provides for federal jurisdiction over these serious crimes if they are committed in the course of another federal offense such as retaliating against a public servant. This would result in federal jurisdiction over crimes against police and bystanders in the course of an attack on any public servant, not just in the course of an attack on the President or Vice President.

13. Freedom of Information Act Amendments

The Freedom of Information Act (FOIA) has an adverse impact on law enforcement. Confidential informants hesitate or refuse to come forward because they fear that their identities may later be disclosed through a Freedom of Information Act request. Institutional information sources, including some local police departments, have likewise become increasingly reluctant to cooperate with federal authorities for fear of such disclosure.

The Freedom of Information Act also imposes a great administrative burden on the Department of Justice, and diverts sorely needed resources from more worthwhile law enforcement programs. Criminal law enforcement agencies, such as the FBI, receive thousands of requests annually for criminal investigation files. The FBI alone employs over 300 persons full-time at a cost of over $11 million annually to process its FOIA requests.

These and other problems must be addressed through legislation which clearly protects confidential information supplied to federal enforcement agencies and by more firmly administering the current law. We have presented our legislative proposals concerning the Freedom of Information Act. We support legislation to amend the Act to accomplish the following:

- Protect law enforcement confidential informants by permitting the government to withhold information from disclosure whenever the information would "tend" to identify a confidential informant.
- Permit the government to withhold any information provided to the government by a confidential informant.
- Permit the government to withhold information provided to it in confidence by private businesses, state and local police, and foreign governments.
- Permit the Attorney General to completely exempt from the FOIA any categories of investigations that he designates relating to terrorism, organized crime or foreign counterintelligence.
- Permit the government to withhold information from disclosure whenever disclosure would endanger the physical safety of any persons, including witnesses and potential witnesses.
- Protect law enforcement manuals, guidelines, procedures and priorities from disclosure under the FOIA.

To the extent our proposals can lessen the unnecessary burdens imposed by the Act, they will significantly benefit our national law enforcement efforts.

14. Death Penalty

Federal law currently provides for the death penalty for certain homicides, air piracy, treason, and espionage. However, except for the air piracy statute, enacted in 1973, these death penalty provisions were rendered unenforceable by a series of Supreme Court decisions beginning in 1972, with Furman v. Georgia, 408 U.S. 238, because they set forth no legislated guidelines to control the exercise of sentencing discretion.

Since the Furman decision, more than two-thirds of the states have amended their death penalty statutes in an effort to reinstate capital punishment. During the same period, several bills to restore the death penalty at the federal level have been introduced in the Congress, but efforts to obtain their passage have been unsuccessful.

Both the President and I have repeatedly indicated in public statements that we support the imposition of the death penalty in carefully circumscribed conditions for the most serious crimes. In our view, the death penalty is warranted for two principal reasons. First, common sense tells us that the death penalty does operate as an effective deterrent for some crimes involving premeditation and calculation, and that it thus will save the lives of persons who would otherwise become the permanent and irretrievable victims of crime. Second, society does have a right -- and the Supreme Court has confirmed that right -- to exact a just and proportionate punishment on those who deliberately flout its laws; and there are some offenses which are so harmful and so reprehensible that no other penalty, not even life imprisonment without the possibility of parole, would represent an adequate response. The actions of our state legislatures over the past decade and the results of recent opinion polls clearly establish that a large majority of the American public share this view that the death penalty is a necessary and appropriate sanction for the most heinous crimes.

Thus, we recommend the enactment of legislation that would, consistent with the constitutional requirements articulated in Furman and subsequent Supreme Court cases, restore the death penalty as an available sanction for the most serious federal crimes committed under aggravating circumstances.

A major step towards accomplishing this result has already taken place in the Judiciary Committee's approval, in July of this year, of S. 114. This past Spring, the Department testified in support of this bill which is designed to provide a set of constitutional procedures that would permit the imposition of the death penalty for a small number of the most serious federal crimes. During our testimony, we suggested a number of amendments to improve the bill, all but one of which (an amendment to require a unanimous jury finding of aggravating circumstances which we continue to support) were adopted by the Judiciary Committee.

It is our view that S. 114, which would permit the imposition of the death penalty only in a limited number of cases involving the brutal taking of human life or the creation of the gravest of risks to the national security and which sets forth the necessary procedures and safeguards to assure that the death penalty would not be imposed in an arbitrary or discriminatory fashion, provides both a constitutional and enforceable means for the restoration of the death penalty at the federal level. Enactment of such legislation is long overdue, and we urge passage of S. 114 by this Congress.

15. Labor Racketeering

Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for federal legislation to deter bribery and address the problem of the infiltration of labor organizations by organized crime. Too often, we see the power and resources of labor organizations used not to benefit their members, but to serve the criminal interests of corrupt individuals.

In at least two respects, our ability to fight labor racketeering can be improved through legislation. First, we believe that Sections 504 and 1111 of Title 29, which prohibit persons convicted of certain crimes from holding positions in labor unions and employee benefit plans, should be strengthened through the enactment of the following amendments:

- The disqualifying crimes under both statutes should be brought into conformity with one another and expanded. For example, under current law, a person convicted of perjury is forbidden to administer an employee benefit plan, but he is free to occupy a responsible position in a union which is affiliated with the same plan and to bargain with employers about the funding of that plan.
- The positions as to which disqualification applies should also be expanded. There are too many instances in which loopholes in the current law are exploited, and convicted persons are permitted to continue to exert power over unions and benefit plans by being hired as "consultants" or "clerical workers."
- Disqualification should become effective immediately upon conviction. Under present law, a union official or employee who has used his position to engage in bribery or who has embezzled union funds can retain his position pending appeal of his conviction,

despite the fact that, having been found guilty beyond a reasonable doubt, his unsuitability for union office has been amply demonstrated.

- The penalty for a violation of these statutes should be elevated to that of a felony.

Second, we recommend the enactment of a "labor bribery" statute that would impose felony penalties in cases involving a high risk of corruption in labor-management relations and that would uniformly prohibit corrupt payments in all industries now covered by the Taft-Hartley and Railway Labor Acts. While 29 U.S.C. 186 now prohibits such corrupt payments, as well as simple "conflict of interest" payments, the penalty for a violation of this statute is limited to a maximum fine of $10,000 and one year's imprisonment. Thus, it does not provide a sufficient penalty in cases of significant corruption or where large amounts of money are involved, nor does it focus sufficiently on the corrupt nature of the conduct in the way a general "labor bribery" statute would.

S. 1163, which has been introduced by Senators Hatch and Nunn, is designed to facilitate our fight against labor racketeering. With some minor changes, its amendments to 29 U.S.C. 504 and 1111, would do much to assure that labor unions and employee benefit plans are free of the control and influence of persons who pose a danger to the integrity of such organizations, as demonstrated by their convictions for serious crimes. In addition, we believe that this bill would be a good vehicle for enactment of a general "labor bribery" statute. This bill also recognizes the importance of providing stiff penalties for labor graft and bribery by increasing the penalties for a violation of 29 U.S.C. 186. We support the spirit of this provision, but believe that it would be better served by amending the bill to incorporate a general "labor bribery" offense that would be included in Title 18.

16. Program Fraud Civil Penalties Act

One of the highest priorities of this Administration is to curb fraud against the government. Such fraud involving federal programs represents a theft of tax dollars just as surely as if the funds were stolen directly from the vaults of the United States Treasury. In addition, program fraud diverts limited resources from the purposes for which they were intended: Food Stamp fraud, for example, literally takes food from the mouths of needy people. Finally, program fraud has a heavy indirect cost as it necessitates development of additional procedures and accounting safeguards with the result that more of each program dollar must be devoted to administrative costs and less to program needs. The total direct costs of fraud against the government has been estimated to be in excess of $10 billion per year; the indirect costs in terms of added administrative expense are even greater.

But despite expanded efforts to control fraud against the government, including the Inspector General Act of 1978, we have not achieved an acceptable level of success in deterring such fraud or in recovering federal funds paid out pursuant to false claims. In large part, this is due to the massive numbers of small fraud cases being detected; prosecutors and courts are awash in small program fraud cases. Of course, the typical response to such a situation is to call for the creation of additional judgeships and an increase in the number of federal prosecutors so that all program fraud cases can be pursued. Yet such a response is not the answer. In fact, judicial proceedings, which are inherently costly and time-consuming, are an inappropriate means of dealing with many small program fraud cases. Rather, what is needed is a less formal and more expeditious alternative to judicial proceedings.

We have developed an important new legislative proposal, presently undergoing interdepartmental review within the

Administration, which we hope to submit to the Congress shortly. This proposal is the Program Fraud Civil Penalties Act. We believe that it will address and help solve many of the problems I have mentioned.

17. Criminal Forfeiture

If we are to deal with the tremendous problem of organized crime and drug trafficking in this country we must be able to deprive organized crime figures and narcotics traffickers of their vast sources of economic power. Thus, criminal forfeiture, a sanction imposed upon conviction, which requires a criminal to forfeit to the United States the property he has amassed and used during the commission of crimes, can, in our view, be a powerful tool in the fight against this type of criminal activity. Presently, both the Racketeer Influenced and Corrupt Organization (RICO) statute, 18 U.S.C. 1961-1968, and the Continuing Criminal Enterprise statute, 21 U.S.C. 848, which punishes those who conduct drug trafficking networks and organizations, permit criminal forfeiture in addition to the traditional sanctions of fine and imprisonment.

It is now the policy of the Department of Justice to seek criminal forfeiture in every RICO and Continuing Criminal Enterprise case where there are substantial, forfeitable assets and a resonable likelihood of success. Unfortunately, however, present criminal forfeiture statutes have not proven to be as effective tools in combatting organized crime and drug trafficking as we had hoped. Since few major narcotics trafficking cases present the elements necessary for conviction under the Continuing Criminal Enterprise statute, criminal forfeiture is is rarely available in these cases, despite the fact that it would be a particularly appropriate sanction in light of the enormous profits reaped by those who deal in drugs. The effectiveness of the RICO forfeiture statute has been limited by the fact that although it permits forfeiture of "enterprises" conducted or acquired by organized crime, it is questionable whether it permits the forfeiture of the enormous profits produced by these "enterprises." Furthermore, these statutes often fail to give us the authority to address the practical problems that arise in attempting to achieve forfeiture of crime-related property, particularly where defendants have concealed or removed such property or transferred it to third parties in an attempt to defeat forfeiture.

While there have been bills introduced in the Congress this year that would address some of these problems, none incorporated the range of improvements which we believe are necessary to make criminal forfeiture a fully effective tool in combatting organized crime and drug trafficking. Therefore, the Department is developing comprehensive legislation to facilitate criminal forfeiture in RICO and narcotics trafficking cases.

This legislation would improve on the current criminal forfeiture statutes by:

- Providing specific authority for the forfeiture of the proceeds of an "enterprise" acquired or maintained in violation of the RICO statute;
- Making criminal forfeiture an available sanction in all major drug trafficking cases;
- Permitting forfeiture of substitute assets of the defendant where property specifically subject to forfeiture cannot be located or identified, or has been transferred to third parties;
- Providing clear authority, in appropriate cases, for the forfeiture of property which a defendant has transferred to a third party;
- Permitting the government to obtain, prior to arrest or indictment, a protective order that would preserve

the government's ability to obtain forfeiture of property; and

- Providing clear authority for the government to obtain a stay of civil forfeiture proceedings pending the disposition of criminal charges.

We urge support for this legislation which would make criminal forfeiture a truly powerful weapon against organized crime and drug trafficking.

Conclusion

Mr. Chairman, let me note in conclusion that the proposals I have outlined today can be embraced by all law-abiding citizens of this nation, for they are designed to protect all such citizens. These are no mere partisan initiatives; they are far too important to the nation's well-being. In my view, they provide the basis for a renewed effort against the menace of crime. They will help restore the balance between the forces of law and the forces of lawlessness.

We have no grand dream of ending crime, however, we can bring this menace under control. The program outlined today can begin to do precisely that. I urge you, Mr. Chairman and Members of the Committee, to give your attention to this legislative package for it will benefit all Americans.

The committee will stand adjourned subject to the call of the Chair.

[Whereupon, at 12:40 p.m, the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

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September 21, 1981

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Senator Strom Thurmond
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Rep. Peter W. Rodino
Chairman, House Judiciary Comm.
Rm. 2462 Rayburn House Office Bldg.
Washington, D.C. 20515

Senator David Durenberger
100 North Sixth Street
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Senator Rudy Boschwitz
Rm. 210 Bremer Bldg.
St. Paul, Minnesota

Congressman James Oberstar
325 East Main
Anoka, Minnesota 55303

Gentlemen:

As a member of the National Association of Criminal Defense Lawyers, the American Bar Association, the Minnesota State Bar Association, the Hennepin County Bar Association, and as a citizen of the United States, I would like to take this opportunity to comment on the Attorney General's Task Force report on violent crime as reported in the Criminal Law Reporter dated August 19, 1981. There are several sections of the report that struck a chord of deep concern in me that constitutional rights for the criminal defendant and all citizens which have been carefully articulated by the courts of our land may be eroded and emasculated by the proposals in the final report.

My comments are by no means exhaustive nor all inclusive, but they are expressed with the desire that the powers that be take a very close look at the proposal in terms of the long range effect on the administration of justice and the criminal justice system.

Consequently, I shall delineate some of my concerns by addressing the specific numbered item under Phase II Recommendations: Federal Law and its Enforcement (said Phase II beginning with Item No. 16).

17. It seems ridiculous to impose mandatory prison sentences for the use of a fire arm in the commission of a Federal felony in view of the fact that the sentencing power of the Federal District judges is discretionary. The institution of mandatory sentences presupposes that the Federal judges do not do their jobs and are not capable of sentencing an individual to an appropriate prison sentence for a crime. Moreover, it removes the ability of a Federal judge to sentence individuals on a case by case basis. Not all criminal defendants are exactly the same, nor should they all be treated the same. Circumstances other than the use of a fire arm can and should be taken into consideration in sentencing one for a crime. I am opposed to the stripping of Federal judges of discretionary power in sentencing.

21. Many states, specifically Minnesota, are instituting serious penalties for felons found in possession of fire arms and for offenders that use a fire arm in the commission of a felony, so it would be a waste of Federal prosecutorial resources to require the Federal government to usurp the state's power and prosecute such offenders. Dual prosecution would be particularly onerous and a waste of time, as the state courts are equipped to do an adequate job with such offenders. If the goal is to bring more serious penalties to the offenders, the Task Force should consider the approach by each state and not assume that the states cannot handle such prosecutions.

22. I do not know what the directive means with respect to researching and developing methods of detecting and apprehending persons unlawfully carrying guns, except that I can surmise that it would mean increased police harassment or Federal agent harassment of individuals in high crime areas or simply result in abusive stop and frisk situations, where any "suspicious" person would be subjected to search for an unlawful weapon. Who are the likely targets to be considered "suspicious" persons? Does the detection of persons unlawfully carrying guns extend to situations where investigative officers set up road blocks in shopping malls and on busy downtown streets searching everyone that passes by with the intent of "detecting and apprehending persons unlawfully carrying guns?" Potential for abuse is tremendous.

23. Present legislation and criminal statutes effectively handle the offenses cited in No. 23 and No. 24 i.e. murder, kidnapping, or assault of a United States official or of a Federal public servant who is engaged in the performance of his official duties. The proposed legislation is redundant, duplicitous, unnecessary and may cause a quagmire for Assistant U.S. Attorneys to decide amongst the numerous Federal statutes to seek an indictment. If loopholes have to be filled, I can understand new legislation; but legislation for the sake of rephrasing existing legislation makes little sense.

25 through 27. Legislation with respect to granting Federal jurisdiction over arson started by explosion where interstate commerce is involved would seem to give the Federal government authority to investigate and prosecute all arsons occurring in the United States, and, thus denigrating the ability of state agencies to properly enforce the arson laws throughout the country. It expands the role of the Federal government in arson investigations. One can only ponder as to the extent of the resources of Federal investigative agencies with respect to criminal activity in the United States.

28 through 30. The potential for abusive use of IRS records is great. The necessity for an expanded dual prosecution policy is tenuous at best, since persons committed of offenses other than tax offenses are rarely in a position to thumb their noses at the government after the prosecution and serving of a sentence where a tax prosecution would be appropriate. Congress should look into the extent of IRS prosecution in relation to prosecutions for other offenses against the government to determine the effectiveness of such tax prosecutions, the cost of such prosecutions and appropriate-

ness of such prosecutions. With respect to the use of rare prosecutorial resources to step up investigation of tax offenses, the report is talking about an increased burden on the taxpayer and/or a shifting of prosecutorial resources from some other area.

31 and 32. The Freedom of Information Act exempts matters which are the subject of ongoing investigations (5 USC 552 (b) (7)). Amendments to the Freedom of Information Act to correct those aspects that impede criminal investigation and prosecution are superflous and unnecessary. Amendments to establish a more rational balance between individual privacy considerations, openness in government, and the government's responsibility to protect citizens from criminal activity presupposes that there are no abuses by government agencies in the investigation of individuals and further presupposes that an individual has no rights with respect to government oppression. It ignores the abuses of the FBI and the CIA during the 1960s and 1970s with respect to the Civil Rights movement, the anti-war movements, and it further ignores government involvement in the infamous Watergate incident.

37. A request for additional resources to expand Federal law enforcement in prosecutorial agencies can impose a significant burden on taxpayers in this time of budget cutting and decimation of other government programs. Moreover, there is no mention of a need for additional Federal public defenders or conflicts panels or court appointed lawyers to represent the indigent defendant. Additionally, the Task Force does not consider the increased burden upon the Federal court system with respect to additional prosecutions contemplated by the proposals in the final report. As Chief Justice Warren Burger has stated many times the Federal Court system is overburdened at this time from the District Court level through the Appellate level to the Supreme Court itself.

38. Again, the discretion of Federal magistrates (who perform an extremely important function in the Federal Court system) is decimated by denying them the right to set appropriate bail in criminal cases. What constitutes "clear and convincing evidence" that a person presents a danger to particular persons or the community? Evaluations and the concerted efforts of Federal magistrates presently take into consideration whether or not a person is a danger to the community while on bail or likely to commit another crime while on bail when setting bail. One questions whether the Task Force looked into statistical information with respect to the number of new crimes committed by persons on bail in the Federal Court system. Moreover, one questions whether the Task Force considered the presumption of innocence which cloaks a criminal defendant prior to the plea of guilty or judgment of conviction by jury or judge. Persons familiar with the practice of criminal law in the Federal Courts from both the prosecutorial and defense viewpoints are hardpressed to argue that the present system does not consider and realistically abide by the considerations mentioned in a through g of No. 38. It is difficult to imagine a Federal magistrate setting a low bail for an individual "accused of a serious crime who has previously, while in a pre-trial release status, committed a serious crime for which he was convicted." (38b) Federal magistrates must be given some credit for knowing what they are doing. Unless we completely do away with the Eighth Amendment with respect to the bail question, the United States Congress cannot eliminate the concept of bail arbitrarily.

39. The elimination of the insanity defense proposal is in response to the widespread misunderstanding, misrepresentation and ignorance of the legitimacy of the defense. Realistically one must consider how many people who are defendants in a criminal case successfully use the insanity defense to avoid consequences of the act for which they have been prosecuted. It makes good headlines to plead the defense of insanity as a criminal defense lawyer, but how many defendants are acquitted by reason of mental illness? Moreover, if one is acquitted by reason of insanity or mental illness, how many people avoid

any consequences? I would be surprised to learn that this happens with any frequency at all in the various jurisdictions across the country, particularly in Federal Court. One thing the Task Force has failed to take into consideration is reality, based on what actually happens across the country.

40. The Exclusionary Rule has not had its "fundamental and legitimate purpose"--- eroded by the action of the courts barring evidence of the truth, however important, if there is an investigative error, however unintended or trivial." The government does not obtain justice by allowing police officers to abuse the rights of citizens in investigation of criminal cases. The government does not achieve justice by abusing constitutional rights of due process, Fourth Amendment rights, by engaging in criminal activity to ensnare others in the web of said criminal activity. To minimize investigative errors, however unintended or trivial by patting the investigative officers on the head and saying "Now, now, you did not mean to be a bad boy", is to give the investigative officer carte blanche to run rough shod over the rights of individuals in the alleged pursuit of criminal activity. To forget abuses of the past, to minimize potential abuses in the future, and to close one's eyes to the fallibility of the humans involved in the investigative process is to totally disregard some of the most basic constitutional principals upon which this great country was established.

41. I am opposed to limiting judicial discretion on sentencing and opposed to mandatory sentences for an arbitrary group of offenses.

42. Limiting Federal habeas corpus might serve to destroy the concept of habeas corpus. If, at any time during a period of incarceration, it comes to light that an individual is wrongfully incarcerated, habeas corpus can be utilized to respectively and legitimately serve the ends of justice. And, the concepts of reality and practicality cannot be eliminated from the system to the Task Force's final report, since not all incarcerated individuals have access to legal counsel, and a great many constitutional principals have become more clearly defined through the efforts of pro se litigators. Federal judges are competent to discern those petitions for writs of habeas corpus which have merit.

44 through 46. My only question is -- where will the finances or funding come for the expansion of such programs?

47 through 51. Federal and state statistical information, fingerprint information, identification information, etc. which is to be more freely exchanged and to be more immediately made available, should be brought up to date properly and corrected for inaccuracies with respect to all persons in the system. One problem that defense lawyers see on a regular basis is that information disseminated about a criminal defendant is oftentimes incorrect with respect to prior record of criminal history. Moreover, said information should not be readily available to the private business sector.

54 through 56. The addition of Federal prisons is a burden on the taxpayer, and an expansion of the Federal government's preemption of state rights. A state like Minnesota, which has a well established Department of Corrections, has to shoulder the burden for other states without much benefit to Minnesota.

58 through 61. I am opposed to the expansion of the Federal government's prosecution of juvenile offenders. Prosecution is not the answer. An effort should be made to alleviate the causes of juvenile crime. The Federal government should not preempt states' control of juvenile crime.

63. It is difficult to understand how the parole board can warn expected victims of obviously dangerous persons who are released on parole. It is a slap in the face of the Federal parole board to intimate that it casually releases "obviously dangerous persons". Subjecting the parole agencies to civil liability would eliminate parole.

Thank you for your indulgence in this important area. It is not my purpose to mollycoddle criminals but to help preserve justice and the rights of all citizens.

Very truly yours,

HANLEY, HERGOTT & HUNZIKER

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BHH:ll

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October 5, 1981

Hon. Strom Thurmond
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RE: Attorney General's Task Force on Violent Crime

Dear Senator Thurmond:

I am writing with respect to certain proposals of the Attorney General's Task Force on Violent Crime. In selecting these particular recommendations, I do not intend to endorse the balance. Those which are the subject of my letter contain such dangerous potential that comment is mandated.

In order for you to evaluate my observations, please be advised I am a Criminal Law Specialist certified by the California Board of Legal Specialization, having been admitted to practice since July of 1953. I spent three years in the Government Appellate Division of the Judge Advocate General's Office of the Army, primarily acting as an appellate prosecutor, briefing and arguing cases before Boards of Review and the United States Court of Military Appeals. Following release from active duty I was an attorney in the United States Attorney's Office for the Southern District of California, which at that time included both Los Angeles and San Diego, serving first in Los Angeles and then from the spring of 1958 until September of 1959 as head of the branch office in San Diego. In that capacity I reviewed almost all cases which were prosecuted in San Diego and Imperial Counties, which had a population in the order of 1.5 million persons. During this time more seizures were made at the Port of Entry at San Ysidro in San Diego County than any other port in the country. This was during the time the Narcotics Control Act of 1956 was operative. Our office had a full-time grand jury meeting at least once a week. We had two United States District Court judges assigned to San Diego and carried the sixth-heaviest criminal case load in the country. As head of the office it was my responsibility to review almost all cases for presentment to the grand jury.

In September of 1959 I entered private practice and have been primarily engaged in a criminal defense practice since that time. I have also served in various capacities with the State Bar of California, including a three-year term as a member of the Board of Governors, during which period of time I was liaison for the State Bar to almost all entities involved in the criminal law process in California, including the Juvenile Justice Committee, the Commission on Corrections, and the Criminal Justice Committee, and was actively involved in legislative positions taken by the State Bar in connection with bills related to criminal law.

Following that service I have continued to be active in various professional activities and am currently serving as vice-chairman of the Federal Rules Committee of the American College of Trial Lawyers. My comments in no way indicate a position of the College.

The reason for my citing the experience I had as head of the United States Attorney's Office in San Diego during the period of time the Narcotics Control Act of 1956 was operative is to point out Congress should have learned from that experience that in the criminal field mandatory "judge hand-tying" legislation has consistently proved to be unworkable and unwise. That was the moving reason for the Narcotics Control Act of 1956 having been repealed, since there is certainly no legislative desire to lessen the vigor with which narcotics prosecutions should be pursued and sanctions imposed. A valuable lesson was learned with respect to that now-repealed act: Mandatory provisions, whether they involve penalties, bail, or other matters, should be avoided. I think you will find there was uniform dissatisfaction among the federal judiciary with respect to those mandatory provisions because they did not permit the court to adjust the exercise of its power to impose appropriate individual sanctions. Furthermore, any legislative act which manifests an underlying distrust of the judiciary is a very dangerous premise upon which to be operating. Those who are experienced in the criminal law field will recognize that the power to ameliorate or adjust to a particular situation is not eliminated by mandatory legislation; it only shifts that power to a prosecutor who then in effect exercises the judicial function by the method of charging. The inappropriateness of that shift is graphically illustrated by my own experience. When I took over the position as head of the United States Attorney's Office in San Diego, I had been admitted to practice slightly less than five years and was 29 years of age. I was the one, however, who decided which defendants would be charged with the mandatory five-year minimum, no-probation, no-parole charge, or a "tax count" permitting the Court to fashion an individual sentence, including probation. It was I, therefore, who in effect controlled the options available to seasoned and highly-respected District Court judges, one of whom -- Judge James M. Carter, recently deceased -- was uniformly recognized for the depth of his experience and the breadth of his knowledge so far as federal criminal law is concerned.

I urge you to weigh carefully this experience which I share with you and which I suggest graphically illustrates the inadvisability of any legislation which would tie the hands of District Court judges and at the same time in all probability have a practical effect on the violent crime rate ranging somewhere between negligible and non-existent.

The proposals to which I am making reference are Recommendation 17 (Mandatory Sentencing for Use of a Firearm); Recommendation 38 (Preventive Detention and Amendment of the Bail Reform Act); and Recommendation 41 (the Federal Criminal Code Sentencing Provisions). I would appreciate your consideration of my comments in this letter.

Respectfully,

Peter J. Hughes

PJH/maj

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October 28, 1981

Senator Strom Thurman
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Dear Senator Thurman:

I recently obtained a draft of the Attorney General's Task Force on Violent Crime, Phase II, recommendations. After careful review of these recommendations, I am extremely concerned that a number of the recommendations would result in invasions of personal liberty and result in little effective gain on the legitimate concerns of the Task Force: violent crimes' effect on this country's citizens.

In general, my observations of the Task Force proposals are as follows:

1. Fails to recognize that federal jurisdiction is limited.
2. Fails to recognize what is really needed. This code was just revised in 1976.
3. No eye towards cost consciousness.
4. Failure to move slowly, to analyze, and digest needs and objectives before implementation of such proposals.

Specifically, my careful review of the recommendations leads me to the following observations:

Recommendation No. 17 - Mandatory Sentencing for Use of Firearms. Most states presently have statutes which provide minimum sentences for persons convicted of offenses committed by the use of firearms. Many prosecutors and court personnel have voiced the opinion that these provisions compromise prosecutors by increasing plea bargaining in those cases where the prosecution does not believe mandatory sentencing should apply to that particular individual. It's major effect, if plea bargaining is not increased, would be to aggravate prison overcrowding and deprive judges of the discretion to fit the punishment to the unique characteristics of the crime and the person convicted. America is now the most incarcerative country in the world, exceeded only by U.S.S.R. and South Africa.

Recommendation Nos. 23 and 24 - Assault, Murder or Kidnapping of U.S. Officials. Every state now has laws which each enforces regarding these crimes, and I question the facility of adding yet another federal law merely for the purpose of duplication, particularly when this statute's relationship to the overall "violent crime problem" is at best tenuous.

Recommendation No. 27 - Federal Arson by Gasoline Prosecution. This seems to be a dangerous precedent as virtually all gasoline can be assumed to move in interstate commerce and would make all arsons federal crimes. If any changes are to be made in the prosecution of violent crime, it should be away from the of federal prosecutions and to the independence of state prosecutions, particularly in areas where adequate laws exist.

Recommendation Nos. 28 and 29 - Access to I.R.S. Records and More I.R.S. Investigations. I.R.S. investigations have historically been vulnerable to abuse, having been used in the past to harrass political persons out of favor with the incumbent administration, and is particularly repugnant to the majority of the citizens of this country.

Recommendation No. 31 - Review of Laws Impeding Law Enforcement. This recommendation is no broad it is either meaningless or the source of substantial constitutional nightmares.

Recommendation No. 32 - Amendment to the Freedom of Information Act. The FOIA already exempts matters which are the subject of ongoing investigations. See 5 U.S.C. 552(b)(7). Although the history of his country has relied upon the strength of its citizens believing that open records are less harmful than secret police, this seems to be a reversal of that belief.

Recommendation Nos. 34, 35, 36 - Reciprocal Use of Detention Facilities. This will only exacerbate the conditions which exist in most city and county jails throughout the country unless substantial monies are appropriated to the states for local jail construction, rather than state prison construction.

Recommendation No. 37 - More Money for Federal Prosecutors. More prosecutors are needed but unless equal increases in public defender and court-appointed attorney funds, the system will not be able to more effectively handle the increased caseload anticipated, and the Sixth Amendment's right of counsel will be seriously impinged if not repealed.

Recommendation No. 38 - Amendment of Bail Reform Act - Preventative Detention. Preventive detention makes a mockery of the presumption of innocence. Only a minute portion of those on bail commit crimes, and it is impossible to predict future dangerousness. A provision for repeal of pretrial release squanders prosecutorial and judicial resources. If there is probable cause to believe a person has committed a crime on pretrial release, or is engaging in activity which indicates he is going to commit another crime, the present judicial system allows the prosecution to bring this matter before the court and to revoke the bond forthwith.

Recommendation No. 39 - Guilty But Mentally Ill . This recommendation would change the whole concept of culpability which is the basis of Anglo-American criminal law. It would be do away with mens rea and impose a form of strict liability. What concerns me about this provision is that there is no difference between "guilty but mentally ill" and "guilty but without intent". For instance, if a father and son were hunting together and the son accidently discharged his weapon, killing his father, but without intent to harm or kill, he could be found "guilty but without intent". This points out the absurdity of additional legislation without substantial impact upon violent crime and opens the floodgates to "guilty but..." offenses such as "guilty but without knowledge that campaign contributions were derived from illicit drug transactions". Where does it end? We don't need the change, and it would accomplish nothing positive.

Recommendation No. 40 - Good Faith Exception to the Exclusionary Will. The first sentence of the recommendation exposes the fallacy of its major premise. It says that police are not deterred from illegal conduct because the rule is enforced. This flies in the face of every fact known to those of us involved in the criminal justice system. Civil damages are totally inadequate, juries would infrequently award them, and almost all police are judgment proof for having minimal performance bond upon which to levy execution in the event judgment does occur. Canada is now undertaking serious study of this exclusionary rule exception and many firmly believe that Canada will invoke an exclusionary rule similar to that presently existing in the United States simply because police are not deterred from illegal conduct by ineffective civil remedies.

Recommendation No. 41 - Enactment of Federal Criminal Code Sentencing Provisions. One of the cornerstones of our judicial system is judicial discretion on sentencing. Not only would this eliminate fitting the punishment to the individual within the proscribed sentence, but would aggravate prison overcrowding and inappropriate placements in prison.

Recommendation Nos. 44 and 45 - Money for State Prosecutors. A good provision but must include funds for defense to effectuate right to counsel and prevent extreme clogging of court dockets.

Recommendation No. 46 - Training for Prison Guards. Excellent recommendation.

Recommendation Nos. 47 and 48 - Better Computer Identification Systems. The present system contains so much incorrect and outdated information that elimination of this data would be as effective and at substantially less cost.

Recommendation No. 54 - Two Billion Dollars for Prisons. By the Task Force's own reckoning, this is one-fifth of what is needed simply to cure present overcrowding. Overcrowding must be dealt with if the government insists on mandatory sentences, but the money would be much better spent developing alternatives to prison, thereby alleviating present overcrowding problems and dealing with the future problems sure to arise as a result of increased sentences to prisons.

Recommendation No. 57 - Money for Rehabilitation Programs. For decades we have been paying lip service to rehabilitation. If this is a serious attempt to actually see if it works, it is an excellent recommendation.

Recommendation Nos. 58, 59, 60 and 61 - Fingerprint, Jurisdiction, and Prosecution of Juveniles. These recommendations will have no effect on violent crime as most states have statutes forbidding the fingerprinting of juveniles, there are no facilities to segregate juveniles from adults, and the number of juveniles prosecuted under federal statutes is extremely small.

Recommendation No. 63 - Tort Remedies Against Parole Officials. Why not just do away with parole altogether. The chilling effect of this legislation would substantially lengthen prison terms and eliminate any discretionary decisions by competent and professional personnel.

I encourage you to conduct a careful analysis of these proposals, weigh the serious invasions of personal liberty against the true effectiveness of the implementation of these proposals, and vigorously oppose or procure substantial modifications of the above recommendations.

Sincerely,

Richard L. Tegtmeier

RLT:eh